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A Framework For Regulating Paralegal Practice In Ontario - Executive Summary and Recommendations

The Honourable Peter deC. Cory

EXECUTIVE SUMMARY

The Review was implemented to explore the role of paralegals in the Ontario justice system. There are incompetent and irresponsible individuals claiming to be paralegals. Their misconduct is disgraceful their actions mislead the public and disrupt the proceedings of courts, boards and tribunals. However, it is also clear that there also able, conscientious and efficient paralegals who provide a needed service to the public in a number of areas.

The importance of legal services to society is self-evident. The public needs access to adequate, effective, affordable legal services. To increase access to justice in a manner that protects the public must be the aim of the legal profession and goal of society.

The presence of paralegals in Ontario has steadily increased. They are now playing an important role in the delivery of legal services particularly in their work before boards and tribunals and in court on provincial offences. Paralegals have a significant role to play in increasing the public's access to legal services.

There is agreement among all interested parties that the activities of paralegals must be subject to a regulatory regime. The protection of the public and the proper functioning of the courts, boards and tribunals urgently require the establishment of a system of licensing and regulating paralegals.

The first step that must be taken is to ensure that paralegals have attained the requisite level of competency. A minimum level of education, successful completion of the examinations and a requirement of good character will ensure the competency of all who work as paralegals. For those entering the field there should be a minimum requirement of the successful completion of a two-year community college program. They must as well complete a period of mentoring.,/p>

In order to practise before specialized boards or in court on provincial offences or in some of the other areas referred to in this Report competency examinations will have to be successfully passed by those who have newly entered the field and those who qualify as grandfathers.

There will have to be a governing body put in place. At the outset it will be composed of four paralegals; four members of the public; two nominees from the Law society of Upper Canada and four representatives from the Ministry of the Attorney General with an independent chair presiding.

The board of governors will be required to ensure that all paralegals have an errors and omissions insurance policy and that a compensation fund has been established. Paralegals will be required to provide and have executed a retainer letter which clearly indicates that the paralegal is NOT a lawyer; that the paralegal

is limited as to the extent of the advice that can be given and that the client may have their accounts assessed. The governing body will also establish a system of discipline for a breach of conduct that is expeditious and fair.

Once an adequate educational standard has been attained and the public protected by a code of conduct, a discipline procedure, an errors and omissions policy and a compensation fund, then paralegals should be authorized to practice in a number of areas. These areas of practice will include:

- appearances before specialized boards and tribunals after passing examinations such as the Ontario Rental Housing Tribunal; the Ontario Labour Relations Board; the Financial Services Commission of Ontario (Dispute Resolution Group); the Ontario Workplace Safety and Insurance Appeals Tribunal; and the Ontario Municipal Board;
- appearances in Small Claims Court and in court on provincial offences; and
- appearances on appeals from the decision of some tribunals and from the decision of the Small Claims Court and the Ontario Court of Justice on provincial offences.

A suggestion but not a recommendation has been made that qualified licensed paralegals may appear before the Immigration and Refugee Board of Canada.

Paralegals should be able to draw simple wills in the following restricted circumstances: where the assets are limited to a matrimonial home, bank accounts, RRSPs, insurance policies and savings bonds and where the distribution under the will is limited to situations where the sole beneficiary is to be the spouse, and if the spouse predeceases the testator or there is no spouse, and the assets are to be divided equally among the children per stirpe. They should also be able to draw and have executed powers of attorney and living wills.

In the family law area paralegals should be restricted to undertaking uncontested divorce proceedings in any one of the following three circumstances: first, where the parties have no children and no significant assets or the assets are jointly held, and if there is no need for, or no issue outstanding, as to spousal support; second, where the proceedings are commenced within one year of the execution of the separation agreement which resolves all collateral concerns; third, where there was a court order resolving all of the ancillary issues granted within one year of the commencement of the divorce action. Licensed paralegals should also be made available by Legal Aid Ontario in a role similar to that of duty counsel for proceedings in family court.

Licensed paralegals should be authorized to practice in the real estate law area where he or she is acting for the vendor in the sale of a residence that is either clear of any mortgage encumbrance or subject only to one mortgage.

The practice of paralegals in the criminal law area will be strictly limited to appearances in court on a small number of true summary conviction offences such as vagrancy.

Paralegals should have the authority to swear affidavits. This is an essential requirement that is integral to their work. Confidential information imparted to paralegals must not be divulged unless a judge deems it necessary for the administration of justice and orders it to be disclosed.

If, in any of the areas in which paralegal are authorized to practise, a client requests the services of a French-speaking paralegal, every effort must be made to find a paralegal in the appropriate field who is fluent in French.

RECOMMENDATIONS

Recommendations 1 to 5: Chapter II General Education and Good Character

Requirements of Paralegals 100-06938/

1. A system should be established for the regulation and licensing of independent paralegals who wish to work in the permissible areas of practice.

2. All paralegals applying for a licence must be of "good character" as the Law Society of Upper Canada has defined that term.

3. Once the courses and curriculum at the accredited community colleges have been approved by the governing body, the following licensing requirements will be in effect:

> (1) paralegals must successfully complete a two-year program provided by an accredited community college;
>
> (2) the curriculum for the two-year accredited community college program will be fixed by the governing body of paralegals in consultation with the members of the faculties of the community colleges, justices of the Ontario Court of Justice, members of boards and tribunals, and the Law Society of Upper Canada; and
>
> (3) upon completion of the two-year accredited community college program, all graduating paralegals will spend three months in a mentoring program, and mentoring may be provided by a lawyer or licensed paralegal with five years of experience; alternatively, it may be attained by monitoring the public proceedings of a specialized board or tribunal with its consent for a period of three months.

4. Those who have practised under the supervision of a lawyer or as independent paralegals for at least two years prior to January 1, 2000 will qualify as "grandfathers" for a licence; they will not be required to complete the two-year accredited community college program.

5. Once the special examinations for paralegals have been approved by the governing body, those who qualify as "grandfathers" will have to pass the special examinations to demonstrate their competency to work in any of the permissible areas of practice and to appear before specialized and non-specialized boards and tribunals and specified courts.

Recommendations 6 to 16: Chapter III The Provision of Protection for the Public

6. The governing body should develop a code of conduct to which all licensed paralegals must adhere, which to the greatest extent possible resembles the code of conduct prepared by the Law Society of Upper Canada for its members.

7. The code of conduct for licensed paralegals should include a provision that information obtained by a licensed paralegal from a client in the

course of providing services to the client must be held in the strictest of confidence and not be divulged unless authorized by the client or required by an order of a court.

8. A procedure for disciplining licensed paralegals should be developed.

9. The procedure for discipline should include, until the paralegal organization becomes self-regulatory, a panel consisting of three members: one lawyer; one licensed paralegal; and one member of the public to review complaints.

10. The discipline panel should be authorized to impose an appropriate punishment, including licence suspension or revocation, fine and reprimand, or any other disposition that it deems appropriate.

11. There should be provision for an appeal of the decision of the discipline panel to the governing body or to the Divisional Court; the appellate body should be authorized to adopt, rescind or vary the decision of the discipline body as it sees fit and impose such sanctions as it deems appropriate.

12. Errors and omissions insurance should be carried by all licensed paralegals.

13. A compensation fund should be established by the governing body.

14. Whenever requested and wherever possible the services of licensed paralegals should be made available in the French language.

15. A process for assessing the accounts of licensed paralegals should be developed by the governing body.

16. All licensed paralegals should use a standard retainer letter which clearly indicates that the licensed paralegal is not a lawyer; that the paralegal is only authorized to practise in specified areas; that advice given to the client must be limited to those areas in which the paralegal is authorized to practise; and that the client may have the bill assessed.

Recommendations 17 to 33: Chapter IV Areas of Permissible Practice - Provincial Boards and Tribunals

17. Wherever the empowering statute of any board or tribunal provides that parties may appear by agent, only licensed qualified paralegals should be authorized to appear.

18. All licensed paralegals appearing before a specialized board or tribunal should be required to either pass a special examination which demonstrates their competence in the work of the particular specialized board or be recommended by a specialized board or tribunal for a secondary licence.

19. The secondary licence should be valid for one year and be renewable annually, and the licensed paralegal should be restricted to appearances before the specified board or tribunal.

20. A paralegal who obtained his or her licence after having completed a program in an accredited community college should be authorized to appear before any non-specialized board or tribunal.

21. "Grandfathered" licensed paralegals should be required to pass a general examination respecting administrative tribunals in order to appear before non-specialized boards. However, a "grandfathered" licensed paralegal who has passed an examination to appear before one specialized board should not be required to pass a further examination to appear before non-specialized boards and tribunals.

22. Costs may be awarded to parties who are represented by licensed paralegals before provincial boards and tribunals and where the licensed paralegal is authorized to appear on the first level of appeal from a decision of a board or tribunal, before those appeal courts.

23. Boards and tribunals should be authorized to order costs against a licensed paralegal if his or her conduct is extremely disruptive, misleading, mendacious or unscrupulous.

24. Boards and tribunals should be authorized to expel a licensed paralegal on a temporary basis where the behaviour of the licensed paralegal is incompetent, dishonest or disruptive.

25. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Rental Housing Tribunal.

26. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal in the first instance from the Ontario Rental Housing Tribunal.

27. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to both assist injured parties in preparing their accident claim forms and to participate in the mediation and arbitration work of the Dispute Resolution Group of the Financial Services Commission of Ontario.

28. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal before the Director of the Dispute Resolution Group of the Financial Services Commission of Ontario.

29. Section 398 of the Insurance Act should be amended to permit

authorized licensed paralegals to appear before the Dispute Resolution Group of the Financial Services Commission of Ontario.

30. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Labour Relations Board.

31. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Workplace Safety and Insurance Appeals Tribunal.

32. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Municipal Board.

33. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before any other specialized board or tribunal of the Province of Ontario.

Recommendations 34 to 36: Chapter VI Areas of Permissible Practice - Small Claims Court

34. Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Small Claims Court.

35. Licensed paralegals who are qualified to appear in the Small Claims Court should be authorized to take an appeal at the first level from a decision of that Court.

36. Clients represented by licensed paralegals should be entitled to costs in the Small Claims Court or on the first level of appeal from that Court.

Recommendations 37 to 38: Chapter VII Permissible Areas of Practice - Provincial Offences

37. Licensed paralegals duly qualified by passing a special examination should be authorized to appear and prosecute and defend provincial offences in the Ontario Court of Justice.

38. Licensed paralegals duly qualified by passing a special examination should be authorized to appear at the first level of appeal from a conviction or acquittal on a provincial offence in the Ontario Court of Justice and their clients on such appeals may be awarded costs.

Recommendation 39: Chapter VIII Areas of Permissible Practice - Criminal Offences and Criminal Pardons

39. Licensed paralegals duly qualified by passing a special examination

should be authorized to appear in the Ontario Court of Justice only in the following specified Criminal Code summary conviction offences:

- **vagrancy;**
- **fraudulently obtaining food, beverage or accommodation;**
- **fraudulently obtaining transportation;**
- **using slugs and tokens;**
- **defacing coins;**
- **duty to safeguard on ice;**
- **failure to keep watch on person towed;**
- **falsifying employment record; and**
- **nudity in a public place.**

Recommendations 40 to 41: Chapter IX Areas of Permissible Practice - Family Law and Change of Name Applications

40. Licensed paralegals duly qualified by passing a special examination should be authorized to appear as duty paralegals in the Ontario Court of Justice and, if future regulations make it permissible, in the Superior Court of Justice.

41. Licensed paralegals duly qualified by passing a special examination should be authorized to prepare and file the necessary papers and to do all that is required in completing an uncontested divorce in circumstances which meet the following conditions:

> **(a) where the parties have no children and no significant assets or the assets are jointly held, and where there is no need for, or there is no issue outstanding as to, spousal support and there are no outstanding collateral issues (for example, division of pensions);**
>
> **(b) where the parties have a separation agreement resolving all collateral issues with a certificate of independent legal advice executed within one year of the commencement of the divorce action; and**
>
> **(c) where there is a court order resolving all of the ancillary issues granted within one year of the commencement of the divorce action.**

Recommendations 42 to 46: Chapter X Areas of Permissible Practice - Wills, Powers of Attorney, Living Wills and Commissioner for Oaths

42. Licensed paralegals should be authorized to draw a simple will in the following circumstances:

> **(a) where the assets consist of no more than the matrimonial home, bank accounts, life insurance policies, RRSPs, annuities and personal chattels; and**

(b) where the distribution of those assets is straightforward, for example, all to a spouse and if the spouse should predecease the testator, or if there is no spouse, to be divided in equal shares per stirpes among the children.

43. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to prepare a "simple" will as set out above.

44. Licensed qualified paralegals should be authorized to advise regarding powers of attorney and living wills, to prepare these documents and have them executed.

45. Licensed paralegals should be authorized to administer oaths and take affidavits.

46. Upon their attaining a licence, paralegals should be issued a seal under the Commissioners for Taking Affidavits Act, which indicates that they are licensed paralegals and are commissioners for filing affidavits in and for the courts in Ontario.

Recommendations 47 to 48: Chapter XI Areas of Permissible Practice - Real Estate

47. Licensed paralegals should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

48. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

Recommendations 49 to 53: Chapter XII How Should Paralegals Be Governed?

49. The Province of Ontario should enact legislation for the regulation of licensed paralegals and delegate to a corporation which functions independently of the Law Society of Upper Canada and the Government of Ontario the responsibility of regulating paralegal practice.

50. The board of the corporation should be composed of 15 persons, and in the interim period during which the board becomes fully functional, the following appointment process should be in effect:

(a) four members representing the Attorney General of Ontario should be appointed by the Attorney General of Ontario;

(b) four members representing the public should be appointed by the

Attorney General of Ontario;

(c) four members representing independent paralegals should be appointed by the Attorney General of Ontario;

(d) two members of the Law Society of Upper Canada should be appointed by the Attorney General of Ontario; and

(e) one independent chairperson should be appointed by the Attorney General of Ontario.

51. Once the board is fully functional:

(a) the four members representing the independent paralegals should be elected from their membership instead of being appointed by the Attorney General of Ontario;

(b) two additional members representing licensed paralegals should be elected from their membership; and

(c) the four members representing the Attorney General of Ontario should be reduced to two members.

52. The enabling legislation should provide that it is an offence for licensed paralegals to practise outside the areas specifically authorized for them.

53. Where a licensed paralegal practises outside specifically authorized areas, the governing body should refer the matter to the Attorney General of Ontario for prosecution.

SUGGESTIONS

Suggestions 1 to 2: Chapter V Areas of Permissible Practice - Immigration and Refugee Board of Canada

1. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the three divisions of the Immigration and Refugee Board of Canada in Ontario, namely the Convention Refugee Determination Division, the Immigration Appeal Division and the Adjucation Division.

2. The Immigration and Refugee Board of Canada should require agents appearing before them in Ontario to provide them with the evidence that they are licensed and have passed the special examination for the Immigration and Refugee Board of Canada.

Additions

54. Licensed paralegals should be authorized to undertake the simple

incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

55. "Grandfathered" paralegals, duly qualified by passing a special examination, should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

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Cadre Stratégique De Réglementation De La Profession D'agent Parajuridique En Ontario - Sommaire Et Recommandations

L'honorable Peter deC. Cory

SOMMAIRE

L'Examen a été mis en oeuvre pour étudier le rôle des agents parajuridiques dans le système de justice de l'Ontario. Des personnes incompétentes et irresponsables prétendent être des agents parajuridiques. Ces individus, qui se conduisent honteusement, posent des gestes qui trompent le public et perturbent les affaires instruites par les tribunaux judiciaires et administratifs et par les commissions. Cependant, il est clair que l'on rencontre aussi des agents parajuridiques compétents, consciencieux et efficaces qui offrent au public un service nécessaire dans certains domaines.

Il va de soi que les services juridiques revêtent de l'importance pour la société. Le public a besoin d'avoir accès à des services juridiques adéquats, efficaces et abordables. La profession juridique et la société doivent avoir pour objectif d'élargir l'accès à la justice de façon à protéger la population.

L'Ontario compte de plus en plus d'agents parajuridiques. Ils jouent maintenant un rôle important dans la prestation de services juridiques, notamment dans leur travail devant les commissions et les tribunaux administratifs, et devant les tribunaux judiciaires, lorsqu'ils s'occupent d'infractions provinciales. Les agents parajuridiques ont un rôle considérable à jouer dans l'intensification de l'accès du public aux services juridiques.

Toutes les parties intéressées conviennent que les activités des agents parajuridiques doivent faire l'objet d'un régime de réglementation. La protection du public et le bon fonctionnement des tribunaux judiciaires et administratifs et des commissions exigent de toute urgence la mise en place d'un régime de délivrance de permis et de réglementation pour les agents parajuridiques.

Il faut d'abord veiller à ce que les agents parajuridiques aient atteint le niveau de compétence professionnelle nécessaire. Un niveau d'études minimal, la réussite d'examens et de bonnes moeurs sont gage de compétence chez les personnes oeuvrant comme agents parajuridiques. Les personnes qui débutent dans le domaine doivent à tout le moins avoir réussi un programme de deux ans dispensé par les collèges communautaires. Elles doivent également être encadrées pendant une certaine période.

Les nouveaux venus dans le domaine des services parajuridiques et ceux et celles qui possèdent des droits acquis devront avoir réussi des examens de compétence professionnelle pour exercer leur profession devant des commissions spécialisées, devant des tribunaux judiciaires s'ils s'occupent d'infractions provinciales, ou dans les autres domaines dont il est question dans le présent Rapport.

Un organisme dirigeant devra être mis en place. Au début, il sera formé de quatre agents parajuridiques, de quatre membres du public, de deux personnes

nommées par le Barreau du Haut-Canada et de quatre représentants du ministère du Procureur général. L'organisme sera dirigé par un président indépendant.

Le conseil des gouverneurs devra veiller à ce que tous les agents parajuridiques aient une police d'assurance erreurs et omissions et à ce qu'un fonds d'indemnisation soit créé. Les agents parajuridiques devront fournir et faire signer une lettre de services prioritaires indiquant précisément que l'agent parajuridique n'est PAS un avocat, qu'il est limité au niveau des conseils qu'il peut donner et que le client peut faire évaluer ses comptes. L'organisme dirigeant établira également un régime disciplinaire rapide et équitable pour les cas de violation à la déontologie.

Lorsqu'une norme éducative appropriée a été atteinte et une fois que le public est protégé par un code de déontologie, une procédure disciplinaire, une police d'assurance erreurs et omissions et un fonds d'indemnisation, les agents parajuridiques devraient être autorisés à exercer leur profession dans certains domaines. Ces domaines de pratique comprendront :

- après avoir réussi des examens, des comparutions devant des commissions et des tribunaux administratifs spécialisés comme le Tribunal du logement de l'Ontario, la Commission des relations de travail de l'Ontario, la Commission des services financiers de l'Ontario (Groupe de règlement des conflits), le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents de travail et la Commission des affaires municipales de l'Ontario;
- des comparutions en Cour des petites créances et devant des tribunaux judiciaires dans des cas d'infractions provinciales;
- des comparutions en appel de la décision de certains tribunaux administratifs et de la décision de la Cour des petites créances et de la Cour de justice de l'Ontario relativement à des infractions provinciales.

Il a été suggéré, mais non recommandé, que des agents parajuridiques compétents qui possèdent un permis puissent comparaître devant la Commission de l'immigration et du statut de réfugié.

Les agents parajuridiques devraient pouvoir rédiger des testaments simples dans certaines circonstances limitées : si les éléments d'actif comprennent seulement le foyer conjugal, les comptes bancaires, les REER, les polices d'assurance et des obligations d'épargne et si la répartition des biens prévue au testament est limitée à des situations dans lesquelles le seul bénéficiaire doit être la conjointe, et que celle-ci meurt avant le testateur ou s'il n'y a pas de conjointe, et que les éléments d'actif doivent être répartis également entre les enfants par souche. Les agents parajuridiques devraient être en mesure de rédiger et de faire signer des procurations et des testaments biologiques.

Dans le domaine du droit de la famille, les agents parajuridiques ne devraient pouvoir s'occuper que de procédures de divorce non contestées dans l'une ou l'autre des trois circonstances suivantes : premièrement, si les parties n'ont pas d'enfants ni d'éléments d'actif importants ou si les éléments d'actif sont possédés conjointement, si aucune pension alimentaire est nécessaire et s'il ne reste aucune question en suspens à cet égard; deuxièmement, si les poursuites sont intentées dans l'année de la signature de l'accord de séparation qui règle toutes les questions accessoires; et troisièmement, si le tribunal a rendu une ordonnance réglant toutes les questions accessoires jugées dans l'année qui suit le début de l'action en divorce. L'Aide juridique de l'Ontario devrait également donner accès aux agents parajuridiques titulaires de permis dans un rôle semblable à celui des avocats de service pour les instances au tribunal de la famille.

Les agents parajuridiques titulaires d'un permis devraient être autorisés à exercer leur profession dans le domaine du droit immobilier s'ils agissent comme vendeur

dans le cadre de la vente d'une résidence qui est franche de charge hypothécaire ou qui n'est grevée que d'une hypothèque.

La pratique des agents parajuridiques dans le domaine du droit criminel sera strictement limitée aux comparutions en cour pour un petit nombre d'infractions poursuivies par déclaration sommaire de culpabilité, comme le vagabondage.

Les agents parajuridiques devraient avoir le pouvoir de faire prêter serment pour des affidavits. Il s'agit d'une exigence essentielle qui fait partie intégrante de leur travail. Les renseignements confidentiels confiés aux agents parajuridiques ne doivent pas être divulgués, sauf si un juge estime que c'est nécessaire pour l'administration de la justice et en ordonne la divulgation.

Si, dans l'un ou l'autre des domaines dans lesquels les agents parajuridiques sont autorisés à exercer leur profession, un client demande les services d'un agent parajuridique francophone, il faut s'efforcer de trouver un agent parajuridique oeuvrant dans le domaine en question qui parle couramment le français.

RECOMMANDATIONS

Recommandations 1 à 5: Chapitre II Exigences générales en matière d'études et de bonnes moeurs qui s'appliquent aux agents parajuridiques

1. Un régime devrait être institué pour la réglementation et la délivrance de permis à des agents parajuridiques indépendants désireux de travailler dans des domaines de pratique permis.

2. Tous les agents parajuridiques qui demandent un permis doivent avoir de « bonnes moeurs » au sens de la définition établie par le Barreau du Haut-Canada.

3. Une fois que les cours et le programme d'études des collèges communautaires agréés ont été approuvés par l'organisme dirigeant, les conditions suivantes relatives aux permis seront en vigueur :

> (1) les agents parajuridiques doivent réussir un programme de deux ans offert par un collège communautaire agréé;
>
> (2) le programme d'études du programme de deux ans des collèges communautaires agréés sera établi par l'organisme dirigeant des agents parajuridiques de concert avec les membres du corps professoral des collèges communautaires, les juges de la Cour de justice de l'Ontario, les membres des commissions et des tribunaux administratifs, et le Barreau du Haut-Canada;
>
> (3) après avoir terminé leur programme de deux ans dans un collège communautaire agréé, tous les agents parajuridiques diplômés consacreront trois mois à un programme d'encadrement; l'encadrement peut être offert par un avocat ou un agent parajuridique possédant un permis et cinq ans d'expérience; subsidiairement, il peut être obtenu par la surveillance des instances publiques d'une commission ou d'un tribunal administratif spécialisé avec son autorisation pour une période de trois mois.

4. Ceux et celles qui ont exercé sous la supervision d'un avocat ou d'agents parajuridiques indépendants pendant au moins deux ans avant le 1er janvier 2000 seront des titulaires de droits acquis d'obtention de permis; ils ne seront pas tenus de terminer le programme de deux ans dispensé dans un collège communautaire agréé.

5. Une fois les examens spéciaux pour agents parajuridiques approuvés par l'organisme dirigeant, les personnes titulaires de droits acquis devront réussir les

examens spéciaux pour démontrer leur compétence professionnelle, ce qui leur permettra de travailler dans l'un ou dans l'autre des domaines de pratique permis et de comparaître devant des commissions et des tribunaux administratifs spécialisés et non spécialisés et certains tribunaux judiciaires.

Recommandations 6 à 16 : Chapitre III Assurer la protection du public

6. L'organisme dirigeant devrait élaborer un code de déontologie auquel les agents parajuridiques doivent adhérer, et qui, dans toute la mesure du possible, ressemble au code de déontologie préparé par le Barreau du Haut-Canada à l'intention de ses membres.

7. Le code de déontologie des agents parajuridiques titulaires d'un permis devrait comprendre une clause selon laquelle l'information obtenue d'un client par un tel agent parajuridique lors de la prestation de services à ce client doit demeurer strictement confidentielle et ne pas être divulguée, sauf si le client l'autorise ou si une ordonnance du tribunal l'exige.

8. Une procédure disciplinaire à l'égard des agents parajuridiques titulaires de permis devrait être élaborée.

9. La procédure disciplinaire devrait comprendre, jusqu'à ce que l'organisme dirigeant s'auto-réglemente, un comité constitué de trois membres : un avocat, un agent parajuridique titulaire d'un permis et un membre du public pour revoir les plaintes.

10. Le comité de discipline devrait être autorisé à infliger une sanction appropriée, y compris la suspension ou la révocation de permis, l'amende ou la réprimande, ou à prendre toute autre décision jugée adéquate.

11. Il devrait être possible d'interjeter appel de la décision du comité de discipline à l'organisme dirigeant ou à la Cour divisionnaire; l'organisme d'appel devrait être autorisé à adopter, à annuler ou à modifier la décision de l'organisme disciplinaire s'il le juge à propos et à imposer les sanctions qu'il juge appropriées.

12. Tous les agents parajuridiques titulaires d'un permis devraient posséder une assurance erreurs et omissions.

13. L'organisme dirigeant devrait créer un fonds d'indemnisation.

14. Au besoin et lorsque c'est possible, les services d'agents parajuridiques titulaires d'un permis devraient être offerts en français.

15. L'organisme dirigeant devrait mettre en place un mécanisme d'évaluation des comptes des agents parajuridiques titulaires de permis.

16. Tous les agents parajuridiques titulaires d'un permis devraient utiliser une lettre type de services prioritaires qui mentionne clairement que l'agent parajuridique titulaire d'un permis n'est pas un avocat; que l'agent parajuridique n'est autorisé à exercer que dans certains domaines; que les conseils donnés au client doivent être limités aux domaines dans lesquels l'agent parajuridique est autorisé à exercer; et que le client peut faire évaluer sa facture.

Recommandations 17 à 33 : Chapitre IV Domaines de pratique permis - Commissions et tribunaux administratifs provinciaux

17. Si la loi habilitante d'une commission ou d'un tribunal administratif prévoit que les parties peuvent comparaître par mandataire, seuls les agents parajuridiques admissibles qui sont titulaires d'un permis devraient être autorisés à comparaître.

18. Tous les agents parajuridiques titulaires d'un permis qui comparaissent devant une commission ou un tribunal administratif spécialisé devraient être

tenus soit de passer un examen spécial qui peut montrer leur compétence dans le travail de la commission spécialisée concernée ou être recommandés par une commission spécialisée ou un tribunal administratif en vue d'un permis secondaire.

19. Le permis secondaire devrait être valide pendant un an et être renouvelable chaque année. L'agent parajuridique titulaire d'un permis devrait être limité à des comparutions devant la commission ou le tribunal administratif indiqué.

20. Un agent parajuridique ayant obtenu son permis après avoir achevé un programme dans un collège communautaire agréé devrait être autorisé à comparaître devant une commission ou un tribunal administratif non spécialisé.

21. Les agents parajuridiques possédant un permis qui sont titulaires de droits acquis devraient être tenus de passer un examen général sur les tribunaux administratifs pour comparaître devant des commissions non spécialisées, et un agent parajuridique possédant un permis qui est titulaire de droits acquis et a réussi un examen pour comparaître devant une commission spécialisée ne devrait pas être tenu de passer un autre examen pour comparaître devant des commissions et des tribunaux administratifs non spécialisés.

22. Les dépens peuvent être adjugés aux parties qui sont représentées par des agents parajuridiques titulaires d'un permis devant des commissions et des tribunaux administratifs provinciaux, et si l'agent parajuridique titulaire d'un permis est autorisé à comparaître au premier pallier d'appel d'une décision d'une commission ou d'un tribunal administratif, devant ces tribunaux d'appel.

23. Les commissions et les tribunaux administratifs devraient être autorisés à rendre une ordonnance d'adjudication des dépens à l'encontre d'un agent parajuridique titulaire d'un permis si sa conduite est très perturbatrice, trompeuse, mensongère ou malhonnête.

24. Les commissions et les tribunaux administratifs devraient être autorisés à expulser temporairement un agent parajuridique titulaire d'un permis si cet agent parajuridique montre un comportement incompétent, malhonnête ou perturbateur.

25. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître devant le Tribunal du logement de l'Ontario.

26. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître en appel d'une décision rendue en première instance par le Tribunal du logement de l'Ontario.

27. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à aider les parties blessées à préparer leurs formules de réclamation d'accident et à participer aux travaux de médiation et d'arbitrage du Groupe de règlement des conflits de la Commission des services financiers de l'Ontario.

28. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître en appel devant le directeur du Groupe de règlement des conflits de la Commission des services financiers de l'Ontario.

29. L'article 398 de la Loi sur les assurances devrait être modifié pour permettre aux agents parajuridiques titulaires d'un permis qui sont dûment autorisés de

comparaître devant le Groupe de règlement des conflits de la Commission des services financiers de l'Ontario.

30. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître devant la Commission des relations de travail de l'Ontario.

31. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître devant le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents de travail.

32. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître devant la Commission des affaires municipales de l'Ontario.

33. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître devant toute autre commission ou tout autre tribunal administratif spécialisé de la province de l'Ontario.

Recommandations 34 à 36 : Chapitre VI Domaines de pratique permis - Cour des petites créances

34. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à comparaître en Cour des petites créances.

35. Les agents parajuridiques titulaires d'un permis qui sont admissibles à comparaître en Cour des petites créances devraient être autorisés à interjeter appel au premier pallier d'une décision de cette Cour.

36. Les clients représentés par des agents parajuridiques titulaires d'un permis devraient avoir droit aux dépens en Cour des petites créances ou au premier pallier d'appel de cette Cour.

Recommandations 37 et 38 : Chapitre VII Domaines de pratique permis - Infractions provinciales

37. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à comparaître et à poursuivre et contester des infractions provinciales en Cour de justice de l'Ontario.

38. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à comparaître au premier pallier d'appel d'une condamnation ou d'un acquittement d'une infraction provinciale, et leurs clients peuvent se faire adjuger des dépens lors de tels appels.

Recommandation 39 : Chapitre VIII Domaines de pratique permis - Infractions criminelles et pardons

39. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à comparaître en Cour de justice de l'Ontario seulement pour les infractions au Code criminel poursuivies par déclaration sommaire de culpabilité qui suivent :

- **vagabondage;**
- **obtention frauduleuse de vivres, de boissons et de logement;**
- **obtention frauduleuse de transport;**
- **utilisation de piécettes;**
- **dégradation de pièces de monnaie;**
- **obligation de protéger sur la glace;**
- **omission de surveiller une personne remorquée;**
- **falsification d'un relevé d'emploi;**
- **nudité dans un lieu public.**

Recommandations 40 et 41 : Chapitre IX Domaines de pratique permis - Droit de la famille et demandes de changement de nom

40. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à comparaître comme agents parajuridiques de service en Cour de justice de l'Ontario et, si la réglementation à venir l'autorise, en Cour supérieure.

41. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à préparer et à déposer les documents requis et à faire le nécessaire pour compléter une procédure de divorce non contestée dans des circonstances qui répondent aux conditions suivantes :

> **(a) les parties n'ont pas d'enfants ni d'élément d'actif important ou les éléments d'actifs sont possédés conjointement, aucune pension alimentaire est nécessaire et aucune question n'est demeurée en suspens à cet égard, et il n'y a pas de questions accessoires en suspens (par exemple, la répartition des régimes de retraite);**
>
> **(b) les parties ont conclu un accord de séparation qui règle toutes les questions accessoires accompagné d'un certificat de conseils juridiques indépendants signé dans l'année suivant le début de l'action en divorce;**
>
> **(c) une ordonnance du tribunal règle toutes les questions accessoires jugées dans l'année qui suit le début de l'action en divorce.**

Recommandations 42 à 46 : Chapitre X Domaines de pratique permis - Testaments, procurations, testaments biologiques et commissaire aux affidavits 42. Les agents parajuridiques titulaires d'un permis devraient être autorisés à rédiger un testament simple dans les circonstances suivantes:

> **(a) si les éléments d'actif comprennent seulement le foyer conjugal, les comptes bancaires, les polices d'assurance-vie, les REER, les rentes et les biens meubles personnels;**
>
> **(b) si la répartition de ces éléments d'actif est simple, par exemple, si les biens sont tous légués à la conjointe et si celle-ci décède avant le testateur, ou s'il n'y a pas de conjointe, et qu'il faut effectuer le partage à parts égales par souche entre les enfants.**

43. Les agents parajuridiques titulaires de droits acquis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à préparer un testament « simple » tel qu'énoncé précédemment.

44. Les agents parajuridiques titulaires d'un permis qui sont admissibles devraient être autorisés à donner des conseils concernant les procurations et les testaments biologiques, afin de préparer ces documents et de les faire signer.

45. Les agents parajuridiques titulaires d'un permis devraient être autorisés à faire prêter serment et à recevoir des affidavits.

46. Après avoir obtenu un permis, les agents parajuridiques devraient se voir accorder un sceau aux termes de la Loi sur les commissaires aux affidavits, qui indique que ce sont des agents parajuridiques titulaires d'un permis et des commissaires chargés du dépôt d'affidavits devant et pour les tribunaux en Ontario.

Recommandations 47 et 48 : Chapitre XI Domaines de pratique permis - Immobilier

47. Les agents parajuridiques titulaires d'un permis devraient être autorisés à agir pour un vendeur dans le cadre de la vente d'un immeuble résidentiel qui est franc de charges hypothécaires ou qui est assujetti à une seule hypothèque.

48. Les agents parajuridiques titulaires de droits acquis qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à agir pour un vendeur dans le cadre de la vente d'un immeuble résidentiel qui est franc de charges hypothécaires ou qui est assujetti à une seule hypothèque.

Recommandations 49 à 53 : Chapitre XII Comment les agents parajuridiques devraient-ils être régis?

49. La province de l'Ontario devrait adopter une loi réglementant les agents parajuridiques titulaires d'un permis et déléguer la responsabilité de réglementer la pratique des services parajuridiques à une société qui fonctionne indépendamment du Barreau du Haut-Canada et du gouvernement de l'Ontario.

50. Le conseil de la société devrait être formé de 15 personnes. Pendant la période intérimaire au cours de laquelle le conseil devient tout à fait fonctionnel, le processus de nomination suivant devrait être en vigueur :

(a) quatre membres représentant le procureur général de l'Ontario devraient être nommés par ce dernier;

(b) quatre membres représentant le public devraient être nommés par le procureur général de l'Ontario;

(c) quatre membres représentant les agents parajuridiques indépendants devraient être nommés par le procureur général de l'Ontario;

(d) deux membres du Barreau du Haut-Canada devraient être nommés par le procureur général de l'Ontario;

(e) un(e) président(e) indépendant(e) devrait être nommé par le procureur général de l'Ontario.

51. Une fois que le conseil est tout à fait fonctionnel :

(a) les quatre membres représentant les agents parajuridiques indépendants devraient être élus par leurs membres plutôt que nommés par le procureur général de l'Ontario;

(b) deux autres membres représentant les agents parajuridiques titulaires d'un permis devraient être élus par leurs membres;

(c) les quatre membres représentant le procureur général de l'Ontario devraient être ramenés à deux membres.

52. La loi habilitante devrait prévoir que les agents parajuridiques titulaires d'un permis commettent une infraction s'ils exercent leur profession dans des domaines autres que ceux qui sont expressément autorisés pour eux.

53. Si un agent parajuridique titulaire d'un permis exerce sa profession dans un domaine autre que ceux qui sont expressément autorisés pour eux, l'organisme dirigeant devrait renvoyer la question au procureur général de l'Ontario à des fins de poursuite.

SUGGESTIONS

Suggestions 1 et 2 : Chapitre V Domaines de pratique permis - Commission de l'immigration et du statut de réfugié

1. Les agents parajuridiques titulaires d'un permis qui sont dûment admissibles, parce qu'ils ont réussi un examen spécial ou parce qu'ils détiennent un permis secondaire, devraient être autorisés à comparaître devant les trois sections de la Commission de l'immigration et du statut de réfugié en Ontario, à savoir la Section du statut de réfugié, la Section d'appel de l'immigration et la Section d'arbitrage.

2. La Commission de l'immigration et du statut de réfugié du Canada devrait exiger que les mandataires qui comparaissent devant elle en Ontario lui fournissent la preuve qu'ils sont titulaires d'un permis et qu'ils ont réussi l'examen spécial pour la Commission de l'immigration et du statut de réfugié du Canada.

Recommandation 54 et 55

54. Les agents parajuridiques titulaires d'un permis devraient être autorisés à procéder à la constitution en personne morale simple de compagnies fermées, si celles-ci, par exemple, comptent seulement un actionnaire et une catégorie d'actions.

55. Les agents parajuridiques qui sont dûment admissibles parce qu'ils ont réussi un examen spécial devraient être autorisés à procéder à la constitution en personne morale simple de compagnies fermées si, par exemple, celles-ci comptent seulement un actionnaire et une catégorie d'actions.

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REPORT

A FRAMEWORK FOR REGULATING PARALEGAL PRACTICE IN ONTARIO

The Honourable Peter deC. Cory

Ontario

2000

Addendum to Report

A Framework for Regulating Paralegal Practice in Ontario

The Honourable Peter deC. Cory

May 31, 2000

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Incorporations

Paralegals working under the supervision of law firms do a great deal of the routine work involved in the incorporation of companies. However, it is the position of the legal organizations that independent paralegals should not be permitted to undertake any work in this area. Their position is that this work is simply too complex for anyone but a lawyer to undertake. For them there is no such thing as a "simple incorporation".

On the other hand one paralegal, Carol Johnston, put forward the example of a useful and inexpensive service that paralegals can provide in this area. She described the requests she received from university students or recent graduates. They need to have and act through a limited company in order to be paid for their work on behalf of a computer company. These companies which she incorporated had only one shareholder and one type of shares. Contrary to the views of the legal organizations there are indeed simple incorporations. In this area precedents are available from a number of sources including the Internet and stationers. Licensed paralegals should be authorised to undertake simple incorporations, for example, where there is only one shareholder and one class of shares. To permit them to perform this work would widen the public access to legal services at a lower cost while providing adequate protection to the public. However, for licensed paralegals to go beyond simple incorporations, and to draft a shareholders' agreement would constitute a breach of their licence.

Recommendation 54 to 55

54. Licensed paralegals should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

55. "Grandfathered" paralegals, duly qualified by passing a special examination, should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

A Framework For Regulating Paralegal Practice In Ontario

REPORT

The Honourable
Peter deC. Cory

2000

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Ontario

A FRAMEWORK FOR REGULATING PARALEGAL PRACTICE IN ONTARIO

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May 31, 2000

The Honourable James M. Flaherty
Attorney General of Ontario
720 Bay Street
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M5G 2K1

Dear Mr. Attorney:

Re: A Framework for Regulating Paralegal Practice in Ontario

I have the honour to present to you my Report in this matter.

Yours very truly,

The Honourable Peter deC. Cory
Chair

A REVIEW OF THE REGULATION OF PARALEGAL PRACTICE IN ONTARIO

THE HONOURABLE PETER deC. CORY
CHAIR

Barbara Hendrickson	Special Counsel
Betty Anne Brooker	Administrator
Shelagh McCarthy	Secretary
Teresa Broderick	Secretary
Krystyna Krywoj	Clerk

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This Review has provided me with the opportunity to work with a group of very able, dedicated and conscientious people. It is due to their efforts that I have been able to complete the Report in a timely manner.

Barbara Hendrickson worked diligently and with great skill in her role as counsel. Her research was thorough and painstaking. Despite my persistent and unreasonable demands she displayed exemplary restraint.

Shelagh McCarthy as secretary, worked with great speed and good will on a constant stream of tapes and drafts that were frequently revised.

Teresa Broderick struggling with the heavy secretarial load worked helpfully, quickly and with great ingenuity. It was she who formatted the Report and brought it to fruition despite a great many problems.

Krystyna Krywoj kept the record of accounts in a most efficient way. She was as well extemely thoughtful and helpful in anticipating all my needs.

Betty Anne Brooker managed the support staff with great skill, tact and patience. She displayed all the best attributes of a superb administrator.

Doreen Potter ably assisted with the final editing of the Report.

At home Edith ignored my worse than usual displays of irritability and as always provided cheerful encouragement throughout.

31 May 2000 Peter deC. Cory

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I

INTRODUCTION

A. Purpose of Review

The purpose of this Review is to explore the role of paralegals in Ontario's justice system. It is undertaken with the aim of determining the quality of education and the requisite level of competency that should be required of paralegals in those areas in which they are authorized to work. As well, it is necessary to consider the safeguards that should be installed for the protection of the public arising from the work of paralegals. The Review must also suggest a method of establishing an organization for licensing and regulating paralegals pursuant to a code of conduct. A discipline procedure must be established to punish misconduct and unauthorized practice. As well, some comments will be made as to the role of the governing body of paralegals.

This Report and its recommendations are directed at paralegals who charge a fee for their appearances as agents before boards or tribunals, or in specified courts, or who perform certain legal services for a fee. The recommendations are not directly applicable to paralegals who work under the supervision of a lawyer who is a member of the Law Society of Upper Canada. Neither is it designed to apply to agents who appear or act without a fee, such as friends or family members. Nor are the recommendations applicable to accountants, lawyers, articling students, law student members of legal aid clinics and student legal aid societies.

As a result of the delay in holding the oral hearings, the time for writing this Report was limited and the Report is not as detailed as it might have been. However, delay cannot in any way serve as an excuse for an inadequate report. There was ample time to consider the major issues and recommendations. The topic of the regulation of paralegals has been studied and considered for years. Dr. Ianni, then president of the University of

Windsor, made a comprehensive study of the issue in 1989 and 1990.[1] The Law Society of Upper Canada undertook a thorough review of this matter in the recent past. These studies, along with the reports and the written and oral submissions, form a sound basis for the recommendations made.

B. Process of Review

As a result of extensive advertising in the press, some 91 written submissions were received. Additional oral submissions were made during the seven days of hearings. Included among the stakeholders making submissions were the following:

- Ontario Conference of Judges
- Justices of the Ontario Court of Justice
- Law Society of Upper Canada
- Canadian Bar Association – Ontario
- Association des juristes d'expression française de l'Ontario
- Canadian Institute of Chartered Accountants
- Community colleges
- County and District Law Presidents' Association
- Criminal Lawyers' Association
- Family Lawyers' Association
- Financial Services Commission of Ontario
- Immigration and Refugee Board of Canada

---

[1] R.W. Ianni, *Task Force on Paralegals* (Toronto: Ontario Ministry of Attorney General, 1990).

- Institute of Agents at Court
- Institute of Law Clerks of Ontario
- Insurance Council of Canada
- Legal Aid Ontario
- Ontario Association of Professional Searchers of Records
- Ontario Crown Attorneys' Association
- Ontario Labour Relations Board
- Ontario Rental Housing Tribunal
- Ontario Workplace Safety and Insurance Appeals Tribunal
- College of Immigration Practitioners of Canada
- POINTTS Advisory Limited
- Unrepresented paralegals

The written submissions were read and carefully considered prior to the oral hearings. The schedule for the oral hearings together with the terms of reference for the Review were sent out to stakeholders in advance of the hearings. The complete list of those who made written and oral submissions, the terms of reference and the schedule for the oral discussions, are set out as appendices to this Report.

The oral hearings were postponed in order to permit the Law Society of Upper Canada to tender its report. That report was very thorough and carefully prepared.[2] Although I did not agree with all of its contents, it was most helpful and well worth waiting for.

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[2] Law Society of Upper Canada, *Convocation Report* (March 23, 2000).

It was apparent from the written submissions that some consensus could be reached. During the oral hearings, the various paralegal organizations made every effort to reach compromises and changes in their positions for the benefit of the public. Unfortunately, the legal associations stated and confirmed on several occasions that their positions put forward in the written submissions were firm and that there was no point in discussing any compromise or change.

C. Need for Regulation

The competence and reliability of paralegals vary widely. Competent paralegals are of great assistance to individuals, to specific courts and to the various boards and tribunals. Those who are incompetent display irresponsible conduct bordering on the criminal. The submissions, oral and written, confirmed and emphasized the urgent need to set standards for licensing paralegals and to regulate their activities. The need to protect the public and to ensure the efficient functioning of many boards, tribunals and courts makes it very clear that swift action is required to establish a system of regulating and licensing paralegals.

A logical approach in developing such a system is, I think, to first determine what will constitute adequate education for paralegals and a method for establishing the requisite level of competence. The next step is to consider what will have to be done by paralegals through their governing body in order to provide a fixed minimum coverage by way of errors and omissions insurance and a compensation fund to provide adequate protection for the public in any work that they undertake. With those steps taken, it will then be appropriate to consider the areas of practice in which paralegals should be permitted to act. Lastly, the organization of paralegals and their governing body should be examined. The subject of governance must include the establishment of a code of conduct and a system of discipline. If these requirements are met, the public will be well protected and boards, tribunals and certain specialized courts will function more effectively.

There is a general consensus among all stakeholders that a system of licensing and regulating paralegals is urgently needed. However, there is no consensus on appropriate areas of practice for paralegals. Rather there is, to say the least, a sharp difference of opinion between the lawyers' organizations and those of the paralegals. The lawyers' organizations may

appear to be intransigent in some respects, but I am confident that this is based primarily upon their desire to see that the public is adequately protected and properly represented. Although I have no doubt of the fundamental good faith of the legal organizations, I must also recognize that it would be contrary to human nature to expect a member of the legal profession to accept that anyone, other than a lawyer, could appropriately advise and represent members of the public on matters that contain any possible aspect of legal advice or action.

Assuming that the protection of the public can be established, what then are the areas in which licensed paralegals should be authorized to practise? Where would their presence enhance the public's access to justice and benefit both the public and the various boards, tribunals and courts before whom they appear? To increase access to justice in a manner that protects the public must be the aim of the legal profession and the goal of government. Increased access may be provided through competent, licensed paralegals acting for fees which would, I think, be significantly lower than fees charged by members of the legal profession.

II

GENERAL EDUCATION AND GOOD CHARACTER REQUIREMENTS OF PARALEGALS

A. Overview

The submissions made to the Review demonstrate that there are incompetent and irresponsible individuals claiming to be paralegals. Their misconduct is disgraceful. Their actions mislead the public and disrupt the proceedings of courts, boards and tribunals. The protection of the public and the proper functioning of the courts, boards and tribunals demand a system of regulating and licensing paralegals. Licensed paralegals must attain an adequate level of education and achieve competence in the field or fields in which they wish to work.

Competence in any field of endeavor is achieved through education and experience. There is no doubt experience plays an important role in attaining, maintaining and demonstrating competence. Yet experience must be based upon a sound educational foundation. In the submissions, there is a general consensus that for those entering the paralegal field there should be a minimum educational requirement, namely the successful completion of a two-year accredited community college program for paralegals. There is also a general consensus that good character should be a requirement for paralegals who wish to be licensed. Further, there is strong support among all stakeholders for the concept of a short period of mentoring. The concept of writing examinations to establish competency for paralegals who wish to be "grandfathered" is generally accepted as reasonable. As well, specialized examinations for both new entrants and "grandfathers" wishing to appear before specialized tribunals and specified courts is supported by most, if not all, stakeholders.

B. Good Character

In my view, a necessary requirement for qualification as a paralegal is that he or she be of good character. The good character requirement should apply to both new entrants and paralegals who wish to be "grandfathered". This requirement is just as important to those entering the paralegal field as it is to those entering the legal profession. This arises from the important and sensitive nature of the service that licensed paralegals will provide to the public. They will, in the course of their work, be privy to confidential information regarding their clients and they will be required to maintain that information in the strictest of confidence.

They will be duty bound to act in the best interests of their clients and to maintain the highest standards of integrity. They will have a duty not only to their clients but also to the tribunals and judicial officers before whom they appear. This is no easy task, and it can only be accomplished by those of very good character who will maintain the highest standards of ethics and competence in their work. Competent paralegals of good character, who maintain a high standard of ethics, will be able to take pride in belonging to an organization that serves the public and aspires to attain a quasi-professional status.

There was a submission from a lawyers' organization, opposed by paralegals, that anyone who has been convicted of unauthorized practice as a paralegal prior to the introduction of the new regime should be denied a licence. In my view, such a conviction may be one factor, but should not be the determining factor in considering an application for a licence as a paralegal. For example, what was in the past unauthorized practice may soon become authorized. In those circumstances, it would be unfair to deny a licence simply because of that conviction.

Further, it is agreed, with one or two exceptions, that disbarred lawyers should be prohibited from practising as paralegals. Yet, just as a disbarred lawyer might apply for reinstatement as a lawyer, so too should a disbarred lawyer be able to apply for admission as a paralegal. However, there must be a heavy onus placed upon a disbarred lawyer to demonstrate good character. The very fact that there was disbarment rather than the imposition of very strict conditions on the right to practise confirms that the lawyer was guilty of serious misconduct.

If paralegals are to be quasi-professional, with rights of appearance before boards and tribunals, and to a limited extent courts, they must comply with the duties and obligations imposed upon them. If licensed paralegals are to inspire confidence in members of the public and tribunals, then they must be of good character. If a disbarred lawyer is able to demonstrate reformation and trustworthiness, he or she might, upon application, be reinstated as a lawyer. I think those instances would be relatively rare. It follows that the acceptance of an application of a disbarred lawyer to become a paralegal should also be rare. Paralegals would not wish to project the image of an organization composed of disbarred lawyers.

The fairest way of dealing with this issue is to ensure that the same requirements with regard to good character and good conduct set by the Law Society of Upper Canada for admission or readmission to practice also apply to paralegals. The determination of what constitutes good character in the paralegal context should be precisely the same as that required for the legal profession. It would be unfair to require a higher standard for licensed paralegals, yet anything less would be inadequate.

The *Law Society Act*[1] in section 27(2) provides that an applicant for admission to the Law Society of Upper Canada must be of "good character". Neither the Act nor the Regulations to the Act contain a definition of "good character". However, a definition of good character has evolved through a number of decisions made by Convocation. Convocation has stated that character is a combination of features which distinguish one person from another: "Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which undoubtedly include, among others, integrity, candour, empathy, and honesty."[2]

C. Educational Requirements

It will take some time before a standard curriculum for accredited community colleges providing a paralegal program has been considered and approved by the governing body of paralegals. Until the first class has graduated under the approved curriculum, all paralegals will have to pass an

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[1] R.S.O. 1990, c. L.8.

[2] *In the Matter of the Application of Michael John Spicer for readmission to the Law Society of Upper Canada*, reasons of Convocation (May 1,1994), at para.15.

examination demonstrating their competence in the area in which they wish to work. Thereafter, to qualify for a licence an individual who does not come within the designation of "grandfather" must successfully complete a two-year paralegal program in an accredited community college.

The basic curriculum of the community college program will eventually have to be determined by the governing body of paralegals in consultation with members of the Law Society of Upper Canada and accredited community college faculties, and members of the boards, tribunals and specified courts. As well, members of administrative tribunals and justices of courts before whom paralegals are specifically permitted to appear may be of great assistance in determining the scope and contents of the curriculum.

The governing body of paralegals may in time determine that there are equivalent educational standards to the accredited community college program and may grant exemptions from this requirement on an individual basis. This is simply to suggest that there could be some flexibility built into the system in the future. What is essential is that there be a minimum basic requirement for both education and mentoring.

Once prospective paralegals complete the accredited community college requirement based upon a curriculum approved by the governing body, they will be able to apply for a licence. However, members who qualify for their licences in this manner will have a very restricted scope of practice. The work or permissible activities that they can undertake will be described later in this Report.[3]

D. Mentoring Program

Assuming that the educational requirements are met, what then of experience? Ideally there should be a period of mentoring. There will be difficulty providing mentoring in the early days of the proposed licensing system. A period of three months spent with a licensed paralegal who has at least five years of experience, or with a lawyer who has at least five years of experience, or three months spent assisting or monitoring the work of a

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[3] See Chapters 4-11.

specialized board or tribunal, with the consent of the board or tribunal, would serve as an adequate basis for the mentoring. These paralegals could be of service to various boards. In turn, members of the boards might instruct the paralegals as to board practice, procedures and decisions. Mentoring should not constitute an insurmountable burden, nor place too high an economic burden on those seeking to qualify as paralegals.

E. Special Courses and Examinations

Paralegals who obtain a licence in compliance with accredited community college requirements will be obliged to pass additional special examinations to demonstrate the level of competency necessary for them to appear before a number of specialized boards, tribunals and specified courts. The circumstances requiring a special examination are described later in greater detail.[4]

In addition to the standard education provided by the two-year community college program, provision should also be made for specialized courses to prepare paralegals to write the special examinations. These courses would relate to practice and procedure before those specialized boards, tribunals and specified courts that are within the permitted areas of paralegals' practice. The special examinations would demonstrate their competence to practise, for example, before a particular specialized tribunal such as the Ontario Rental Housing Tribunal. The general two-year accredited community college program, together with the specialized courses and special examinations, would be required to provide an adequate educational base for licensed paralegals wishing to appear before specialized boards, tribunals and specified courts.

Community colleges, particularly Seneca College, indicated that they would be pleased, not only to provide these additional courses and to assist in the preparation of the special examinations, but also to make the specialized courses available both in the daytime and the evening.

Wherever required the courses, and in every instance the examinations, should be made available in both French and English.

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[4] See Chapter 4.

F. The Grandfathering Provisions

It must be remembered that there are both scoundrels acting as paralegals and those who are dedicated and competent. The latter have been of great assistance to the tribunals, boards and courts before whom they appeared. Yet it is also very clear from the submissions that merely working as a paralegal does not necessarily demonstrate competence.

However, it is my opinion that those who have practised as independent or supervised paralegals for at least two years prior to January 1, 2000 should qualify as "grandfathers". Others who have commenced their work or training at a later date, but who will have completed two years in their field prior to establishment of a governing body, may apply to that body for an exemption from undertaking a two-year program at an accredited community college.

Although paralegals who qualify as "grandfathers" need not meet the two-year community college requirement, they must pass an examination demonstrating their competence in their chosen field or fields of specialization. The details of the examination requirements for grandfathered paralegals will be discussed later in this Report.[5]

I am advised that there are experienced paralegals who are opposed to writing examinations. However, it was certainly the position of all but one of the paralegals who made oral representations that there should indeed be a demonstration of competence by passing an examination.

In this vein, I would specifically like to note and commend the submissions made by POINTTS and the Institute of Agents at Court. These groups are made up primarily of former policemen, with as much as 10 to 15 years of experience in police work. Their organizations also include former justices of the peace. They unanimously agree that, in spite of their past experience and the volume of their past work, they would be prepared to write an examination to demonstrate their competence. It is this sort of an example that will instill confidence in paralegals among members of the public. Indeed, it is that demonstration of a very real sense of responsibility

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[5] See Chapters 4 -11.

and public duty that will go far to alleviate the fears of members of legal organizations as to the competence and reliability of paralegals. For the protection of the public and the benefit of the courts and boards in which they seek to practise, an examination must be written.

I would also like to commend Sheridan College. Ms. Pasternik on behalf of that college confirmed that it would be prepared to provide a course that would prepare paralegals who as "grandfathers" wish to write the requisite examinations. I am sure this position will be adopted by many community colleges.

Recommendations 1 to 5:

1. A system should be established for the regulation and licensing of independent paralegals who wish to work in the permissible areas of practice.

2. All paralegals applying for a licence must be of "good character" as the Law Society of Upper Canada has defined that term.

3. Once the courses and curriculum at the accredited community colleges have been approved by the governing body, the following licensing requirements will be in effect:

(a) paralegals must successfully complete a two-year program provided by an accredited community college;

(b) the curriculum for the two-year accredited community college program will be fixed by the governing body of paralegals in consultation with the members of the faculties of the community colleges, justices of the Ontario Court of Justice, members of boards and tribunals, and the Law Society of Upper Canada; and

(c) upon completion of the two-year accredited community college program, all graduating paralegals will spend three months in a mentoring program, and mentoring may be provided by a lawyer or licensed paralegal with five years of experience; alternatively, it may be attained

by monitoring the public proceedings of a specialized board or tribunal with its consent for a period of three months.

4. Those who have practised under the supervision of a lawyer or as independent paralegals for at least two years prior to January 1, 2000 will qualify as "grandfathers" for a licence; they will not be required to complete the two-year accredited community college program.

5. Once the special examinations for paralegals have been approved by the governing body, those who qualify as "grandfathers" will have to pass the special examinations to demonstrate their competency to work in any of the permissible areas of practice and to appear before specialized and non-specialized boards and tribunals and specified courts.

III

THE PROVISION OF PROTECTION FOR THE PUBLIC

A. Introduction

In addition to the education and good character requirements for paralegals, there are other protections that must be provided for members of the public. I am very pleased to report that there is unanimity among the paralegals that there must be a system of licensing and regulation and that they are to be governed by a code of conduct and subject to discipline proceedings. They agree that only qualified and licensed paralegals should be able to practise in the areas designated as authorized for practice by them, and only in these areas.

B. Errors and Omissions Insurance and Compensation Fund

Further, it is gratifying to report that the paralegals are unanimous that all qualified paralegals must carry errors and omissions insurance. The limits of that insurance will be for the governing body to determine, but many suggested the coverage provided by their own policies, which is in the area of up to one million dollars. This seems to be satisfactory coverage. Further, although they are not unanimous, the vast majority of the paralegals agree to set up a compensation fund.

Mr. Nancoff, president, Paralegal Association of Ontario, spoke very well on this issue. He stated that the amounts of the compensation fund need not be high. He cited as an example his organization's reimbursement of a client for fees paid to a paralegal for services which were never performed. Because the fees charged by paralegals are invariably lower than the deductible of his association's errors and omissions policy which was $2,500,

the compensation fund was used to reimburse the client. This seems eminently fair.

In my view, there is no doubt that the governing body must provide for a compensation fund. That can be done in a number of ways without the expenditure of significant sums of money. For instance, it could be based upon a loan arrangement through banks or trust companies. Undoubtedly other satisfactory methods of financing the fund might be arranged that would meet with the approval of the governing body and amply protect the public.

C. Code of Conduct

The paralegals are unanimous that there should be a code of conduct. Some suggested one or other of the codes of conduct of existing paralegal organizations. They appear to be similar to the Rules of Professional Conduct provided for lawyers by the Law Society of Upper Canada.[1] To the extent that they are, they may be helpful, since the code of conduct for paralegals should resemble as closely as possible that of the Law Society.

The code must set high standards for licensed paralegals. This follows from the nature of the work licensed paralegals will be performing. They will be acting as agents before important, highly specialized boards and tribunals and specified courts. If the recommendations in this Report are carried into effect, they will have the authority to take appeals from many of these boards and tribunals and from the Small Claims Court and the Ontario Court of Justice on provincial offences.

There were many complaints regarding the advertising done by some paralegals, some of which was clearly misleading, if not fraudulent. The advertising by paralegals must not be misleading, and must be accurate and free from exaggerated claims. Generally, their advertising should be subject to the same limitations and restrictions that are imposed upon lawyers, with appropriate variations to reflect the differences between paralegals and lawyers.

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[1] Law Society of Upper Canada, *Professional Conduct Handbook* (1996).

The conduct of licensed paralegals must be beyond reproach and their integrity must be the highest. They will have special privileges and must conduct themselves in a manner comparable to that of members of the legal profession. It is imperative that they be required to comply with the high standard of conduct that will be demanded by their code. The code and the requirement that paralegals comply with it will provide protection for members of the public and the specified courts, boards and tribunals before whom licensed paralegals will appear.

D. Confidentiality

In the course of their work, licensed paralegals will be privy to confidential information pertaining to their clients that they must not disclose. Consequently, the legislation pertaining to licensed paralegals should ensure that they cannot be required to divulge the confidential information they have received, unless a judge of the Ontario Court of Justice or Superior Court of Justice finds that, in the interest of the due administration of justice, it must be disclosed.

E. Discipline Procedure

Paralegals also support the notion of their members being subject to a discipline procedure which can consider complaints expeditiously yet ensure that they are dealt with fairly. A discipline panel set up to hear the complaints should generally be composed of three members: one lawyer; one member of the public; and one licensed paralegal. This should be the composition of the panel until licensed paralegals have demonstrated their responsibility and cohesiveness to such an extent that they can become self-regulating.

If a majority of the panel concludes that the complaint is valid, then the appropriate punishment should be imposed. For example, they might impose a reprimand, a fine, a temporary suspension of a licence or a revocation of the licence. If the majority is of the view that suspension is appropriate, then the licensed paralegal should be suspended and enjoined from practising until an appellate tribunal or the governing body decides otherwise.

There must be an appeal available from the decision of the panel hearing the complaint. That appeal might be either to the governing body or to the Divisional Court. The body hearing the appeal may set aside or confirm the decision. It may, in the case of a suspension, make the injunction permanent, or fix a term and impose conditions. The appellant tribunal, like the discipline panel, should be empowered to impose whatever punishment, from fine to temporary or permanent suspension, as may appear appropriate and just in the circumstances. The discipline proceeding must be effective and prompt in dealing with complaints. It must, as well, be transparent and open to the public.

F. Availability of Services in Both Official Languages

If, in any of the areas in which paralegals are authorized to practise, a client requests the services of a French-speaking paralegal, every effort must be made to find a paralegal in the appropriate field who is fluent in French.

G. Assessment of Accounts

Again the paralegals were candid and considerate of the protection of the public in this regard. They agree that they should advise their clients that they have the right to submit their bill for assessment. Further, they are willing to set out ranges of fees and have their fees compared with those of lawyers. They agree that their bills must generally be assessed at a lower rate than those of lawyers.

H. Retainer Letter

I am pleased to report that paralegals are in accord with the use of a standard retainer form. That standard form in its first paragraph will indicate that the paralegal is NOT a lawyer. Further, I think that same retainer form should clearly indicate that any advice given to the paralegal's client must be limited to the particular areas in which the paralegal is authorized to practise and specify those areas.

Some paralegals stated that they would include as well a provision that they would not give legal advice. I wonder if that is appropriate? A paralegal acting, for example, on a hearing before the Ontario Rental Housing Tribunal would of necessity have to give advice, which could be deemed to be legal in nature but would necessarily pertain to an appearance before that Tribunal. So long as that advice is limited to a field of practice that is authorized for the paralegal, then it is appropriate. Anything more might be inappropriate and subject to both discipline procedure and claims under the errors and omissions policy.

The standard retainer form will ensure that members of the public are able to make an informed choice between a lawyer and a licensed paralegal, and are aware of the service that they are likely to get.

In order to accommodate these recommendations, the first three sentences of the retainer form should provide:

> I acknowledge that you have advised me that you are NOT a lawyer. Further I acknowledge that any advice you give to me must be restricted to the field of practice in which you operate which is _____. In addition, I understand that your account may be assessed.

I. Conclusion

If my recommendations are accepted, the public will be well protected. This is important and satisfies the two goals of this Review, namely, where appropriate to extend access to justice and to ensure the protection of the public. Members of the public will be well protected by knowing that a paralegal has demonstrated his or her competence and has been licensed, is bound by a code of conduct and is subject to discipline proceedings for breach of that code. This, coupled with the provision of errors and omissions insurance and access to a compensation fund, will go far to alleviate any concerns that paralegals are either incompetent or irresponsible.

Recommendations 6 to 16:

6. The governing body should develop a code of conduct to which all licensed paralegals must adhere, which to the greatest extent

possible resembles the code of conduct prepared by the Law Society of Upper Canada for its members.

7. **The code of conduct for licensed paralegals should include a provision that information obtained by a licensed paralegal from a client in the course of providing services to the client must be held in the strictest of confidence and not be divulged unless authorized by the client or required by an order of a court.**

8. **A procedure for disciplining licensed paralegals should be developed.**

9. **The procedure for discipline should include, until the paralegal organization becomes self-regulatory, a panel consisting of three members: one lawyer; one licensed paralegal; and one member of the public to review complaints.**

10. **The discipline panel should be authorized to impose an appropriate punishment, including licence suspension or revocation, fine and reprimand, or any other disposition that it deems appropriate.**

11. **There should be provision for an appeal of the decision of the discipline panel to the governing body or to the Divisional Court; the appellate body should be authorized to adopt, rescind or vary the decision of the discipline body as it sees fit and impose such sanctions as it deems appropriate.**

12. **Errors and omissions insurance should be carried by all licensed paralegals.**

13. **A compensation fund should be established by the governing body.**

14. **Whenever requested and wherever possible the services of licensed paralegals should be made available in the French language.**

15. **A process for assessing the accounts of licensed paralegals should be developed by the governing body.**

16. All licensed paralegals should use a standard retainer letter which clearly indicates that the licensed paralegal is not a lawyer; that the paralegal is only authorized to practise in specified areas; that advice given to the client must be limited to those areas in which the paralegal is authorized to practise; and that the client may have the bill assessed.

IV

AREAS OF PERMISSIBLE PRACTICE - PROVINCIAL BOARDS AND TRIBUNALS

A. Introduction

While there is a general consensus among both legal and paralegal stakeholders that a system of licensing and regulating paralegals is needed which will include the basic components set out above, there is no consensus on appropriate areas of practice for paralegals. The differences of opinion require that an answer be given to the following question. Bearing in mind the proposed qualifications and conditions for licensed paralegals, what are the areas in which they should be authorized to practise? This will be the subject of the next several chapters.

B. Appearances Before Specialized Boards and Tribunals

Mr. Murray Chitra, president of the Society of Ontario Adjudicators and Regulators, and vice-president of the Canadian Council of Administrative Tribunals, made a very helpful presentation. He pointed out that there are over 1,000 adjudicators in Ontario sitting on more than 100 tribunals. He stated that not all adjudicators who conduct hearings are lawyers. He emphasized that the procedures of most tribunals are simple and straightforward. He added that many thousands of cases are processed each year and more people appear before those tribunals each year than in all courts combined.

He is of the view that there are many competent and responsible paralegals who appear before provincial boards and tribunals, and many others who should not. In his opinion, there is a very real need to regulate paralegals appearing before boards and tribunals. I agree with the submission

of Mr. Chitra and many others who strongly expressed the view that there must be a system of licensing with a code of conduct and a discipline procedure for paralegals. This is urgently required to protect society from incompetent and irresponsible persons representing themselves as paralegals.

Mr. Chitra stressed that there are many paralegals who are competent, reliable and helpful to the provincial tribunals. Indeed, he observed that the work of the boards and tribunals could not be processed as efficiently or as well without the significant contribution of competent and dedicated paralegals. However, he emphasized the broad range of boards and tribunals before which paralegals appear. As examples of the diversity of the provincial boards and tribunals, he referred to the Ontario Board of Parole, which rarely sees a lawyer in the course of its proceedings, and his own Ontario Civilian Commission on Police Services, where no less than nine different types of hearings are undertaken. He emphasized that, although there are many skilled and able paralegals, because of the diversity of the boards "one size would not fit all".

I agree with this comment. There are some boards and tribunals which are so specialized that a paralegal must demonstrate by examination the requisite competence necessary in order to appear before them. By specialized tribunals I mean ones with a complicated procedure operating in a sensitive area. The following boards are examples of specialized tribunals: the Ontario Rental Housing Tribunal; the Ontario Labour Relations Board; the Financial Services Commission of Ontario (Dispute Resolution Group); the Ontario Workplace Safety and Insurance Appeals Tribunal; the Ontario Municipal Board; the Ontario Highway Transport Board; the Commercial Registration Appeal Tribunal; the Consent and Capacity Board; the Ontario Civilian Commission on Police Services; and the Licence Suspension Appeal Board.

This list is neither exhaustive nor exclusive. As society and the administrative tribunals evolve, the governing body of paralegals will determine which of them should be designated as specialized. The determination will be based on the complexity of the issues the tribunal must resolve, the intricacies of its procedure and the sensitivity of the matters before it.

The competency examinations should be designed in consultation with members of the particular board or tribunal, the faculty of the accredited

community colleges and, if feasible, representatives of the Law Society of Upper Canada. A number of the accredited community colleges have volunteered to help design courses which would prepare paralegals for these examinations.

Although it would be more convenient to have one general licence for paralegals appearing before all boards and tribunals, this is simply not practical. It would be difficult to structure a general licensing process that would provide sufficient training for paralegals appearing before those specialized boards to adequately protect the public. In time, the governing body may be able to develop a generalized examination for paralegals wishing to appear before these highly specialized boards and tribunals. It may well be that sometime in the future the education for paralegals will be of such a high standard that the successful completion of it will demonstrate that a paralegal has the ability to appear before any board or tribunal. However, for the foreseeable future, a paralegal will have to pass a specialized examination which will demonstrate the required degree of competency to appear before each specialized board or tribunal.

Clearly a licensed paralegal who is qualified as competent to appear before a specific tribunal will be authorized to advise clients with regard to the matters which are relevant to an appearance before that board or tribunal. This will hold true with regard to each specific board or tribunal before which the licensed paralegal is competent to appear.

However, some tribunals such as the Ontario Labour Relations Board suggested that licensing was not necessary. Rather they recommended the passage of provincial legislation to provide their tribunals with the means to deal quickly and effectively with incompetent, dishonest or obstructive agents. The same recommendation was made by the Ontario Rental Housing Tribunal.

Further, the Ontario Labour Relations Board observed that their members are greatly assisted by persons such as union executives or representatives. These helpful people are familiar with the Board's work and procedure. In the same vein, the CAW - Canada pointed out that their members assist individuals who appear before the Board.

Yet, in my opinion, to adequately protect the public in a manner that is appropriate, a licensing scheme is essential. There is no other way in

which adequate insurance provisions, a code of conduct and the necessary discipline procedures can be provided. A general scheme requiring some form of licensing for all paralegals is preferable to each tribunal exercising its discretion or setting up its own rules and regulations. Those rules might not provide for adequate protection of the public by way of errors and omissions insurance, a compensation fund, a code of conduct and a discipline procedure.

C. Secondary Licences

What should be done to ensure that those particularly skilled laypersons such as officers and former officers of unions or shop stewards, who are at present assisting specialized boards and tribunals, can continue their good work? I believe that there are two possible solutions.

The first is to set up a licensing scheme which recognizes that these persons fall within a particular class. As members of that class they would be entitled to a secondary licence. It would enable them to appear only before a particular specialized tribunal such as the Ontario Labour Relations Board. A lower fee would be paid for the secondary licence. The second option would be to allow the board or tribunal to exercise its discretion so as to allow an unlicensed paralegal to act as an agent. I could not accept the second alternative.

There is a sound basis for requiring all who appear before specialized boards and tribunals to have some type of licence. First, there is an aspect of unfairness in requiring some paralegals to undertake special education, pass examinations demonstrating competence to appear before special boards and tribunals, and bear the cost of carrying errors and omissions insurance, while those who appear as a result of the board or tribunal's exercise of discretion would not. As well, licensed paralegals would provide protection to the public in all of the ways that I have outlined above, while the other "agents" would provide none. Licensed paralegals would support their governing body though their licensing fees to relieve the public of the costs of its maintenance, while the other "agents" would not. It is only fair that all "agents" charging a fee for appearing before boards and tribunals contribute to the cost of operating the licensing scheme which is so essential for the protection of the public. The proposed scheme of secondary licences provides for that essential protection.

Further, in my view, those appearing before boards or tribunals while employed as social workers, union staff or representatives should be considered to be acting as agents for a fee. The fee received would be derived from their salaries or compensation paid by their employers. This follows since an integral part of the services these employees render in return for their salary is their appearance before specialized boards or tribunals. The fee for the secondary licence I envisage as being less than that paid by other licensed paralegals. Perhaps it will be paid by their employers.

Specialized boards and tribunals such as the Ontario Labour Relations Board could submit to the governing body of paralegals the list of those agents they would recommend as holders of a secondary licence. These would be people known to the board or tribunal as knowledgeable, reliable and helpful. The board or tribunal, in effect, is vouching for the good character, competence and reliability of these persons. On the basis of its recommendations, a secondary licence valid for one year could be readily issued to those persons for a fee to be set by the governing body in an amount less than that paid for a standard licence. The secondary licence could be reissued annually on the recommendation of the board or tribunal.

The proposed granting of secondary licences for specialized boards and tribunals is based on recognition of the highly specialized nature of these boards and tribunals. They operate in very sensitive areas and require special expertise. They have for some time operated with the assistance of agents they have found to be competent and reliable. They should be able to continue to do so without undue restriction.

The system of secondary licences should fulfill these requirements, yet protect the public and preserve a system of licensing paralegals. The aim is not to restrict or unnecessarily eliminate experienced people from appearing before a specialized board, but rather to bring all those who act as agents up to an appropriate level of skill and to provide adequate protection for the public. When, for the protection of the public, errors and omissions insurance coverage is in place, in order to satisfy the insurer, it may be necessary for holders of a secondary licence to write a competency examination. Whether the examination is necessary will be for the insurer to determine. It would not be necessary to write that examination annually when the licence is renewed.

D. Appearances Before Non-Specialized Boards and Tribunals

In the near future, licensed paralegals will have had the benefit of an accredited community college program. The curriculum of all community colleges should include a mandatory course pertaining to administrative tribunals generally and to practice, procedure and advocacy before them. The successful completion of this course will be sufficient to authorize a licensed paralegal to appear before all the provincial boards and tribunals that are not classified as specialized.

However, paralegals who obtain their licences through the grandfathering provisions may not have had the benefit of these courses. It follows that they should be required to pass a general examination relating to the work of non-specialized boards and tribunals before being authorized to appear before them. However, if a "grandfather" has passed an examination demonstrating that he or she May 16, 2000 has the required level of competence to act for a client before a specialized tribunal, that will be a sufficient basis for authorizing that "grandfather" to appear before all the boards and tribunals which are not designated as specialized.

E. Right of Tribunals to Expel Licensed Paralegals

The Ontario Labour Relations Board and the Ontario Rental Housing Tribunal recommend the passage of provincial legislation that would enable them to quickly and effectively deal with incompetent, dishonest or disruptive paralegals. If tribunals do not already have the ability to do so, then, subject to the conditions that I will set out, they should be provided with that authority.

In clearly defined and designated circumstances, a board or tribunal should have the authority to prohibit a qualified, licensed paralegal from appearing, for example, if that paralegal has seriously misrepresented matters before the board on other occasions, or if his or her conduct is so disruptive or unreliable that matters cannot proceed expeditiously and efficiently. The conditions for refusing appearance would have to be very clear to all and readily ascertainable by licensed paralegals.

F. Costs Pertaining to Licensed Paralegals on Appeals

Wherever an empowering statute provides that a board or tribunal may award costs, then costs may be awarded to a party represented by a licensed paralegal. Similarly, on the first level of appeal, costs may be awarded to a party represented by a licensed paralegal.

G. Awards of Costs Against Licensed Paralegals

A number of boards or tribunals have pointed to the need to award costs against a paralegal. This may arise in circumstances where the behavior of the paralegal is so disruptive that it interferes with the activities of the tribunal, or is misleading, mendacious or unscrupulous. I agree that in these special circumstances it would be appropriate for boards or tribunals to levy costs personally against licensed paralegals.

H. Appearances Before Particular Specialized Boards and Tribunals

i) Introduction

Paralegals seek authorization to appear before boards and tribunals, including some that are specialized. They include the following provincial tribunals: the Ontario Rental Housing Tribunal; the Ontario Labour Relations Board; the Financial Services Commission of Ontario (Dispute Resolution Group); the Ontario Municipal Board; and the Ontario Workplace Safety and Insurance Appeals Tribunal. In the federal field they include the Immigration and Refugee Board of Canada.[1] In the case of some of the specialized tribunals discussed in this portion of the Report, the appearance of paralegals was made an issue by the lawyers' organizations.

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[1] See Chapter 5 for a discussion of the Immigration and Refugee Board of Canada.

ii) Ontario Rental Housing Tribunal

I would like to thank the members of the Ontario Rental Housing Tribunal for their very helpful submissions. Again, it is apparent that there are both incompetent, unscrupulous, parasitic paralegals, who are a disgrace to the community, and hard-working, dedicated, able paralegals appearing before this Tribunal. This Tribunal welcomes the competent paralegals. I think the licensing requirement and the passing of a competency examination should be able to eliminate the "bad and the ugly" leaving only the good. There is general agreement from the lawyers' groups that licensed paralegals should be permitted to appear before this Tribunal. The competent paralegals have done very commendable work in this field and should be authorized to continue to do so.

It cannot be forgotten that this Tribunal is of great importance to members of the public. It is, after all, concerned with shelter, one of the basic necessities of life. For example, when funds are scarce, an increase in rent will have great significance for a family. Indeed, it might have quite tragic consequences. Tenants, as well as landlords, should have access to competent paralegals to present their position, and to act on their behalf at a reasonable fee.

It has been recommended that all licensed paralegals must have passed a qualifying examination to appear before this specialized Tribunal. I am pleased to note that accredited community colleges, particularly Sheridan Community College, are providing courses that include specific reference to landlord and tenant matters, and procedures and advocacy before this Tribunal. As well, they are prepared to provide a course for those who wish to take the competency examination. Indeed, Sheridan College indicated that it would make the courses available in the evening as well as during the day.

In my view, if a licensed paralegal has established the requisite competence to appear before this Tribunal then that paralegal is competent to take the first level of appeal of its decision. In *Coutu v. Boardman*,[2] a decision of the Justice Lofchik sitting as a member of the Divisional Court, it was held that the landlord might be represented by an agent of her choice

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[2] Unreported (Ont. Div. Ct., File No. D537/95, July 4, 1995).

in the appeal. In addition, the 1999 decision of Justice Terrance O'Connor of the Divisional Court in *Lai Sheung Ip v. King*[3] authorized an agent to appear for the appellant tenants on an appeal from the Ontario Rental Housing Tribunal. *King v. Metropolitan Toronto Housing Authority*[4] was heard by a panel of three judges of the Divisional Court with Chief Justice Mr. McMurtry presiding. It considered an appeal under the previous *Landlord and Tenant Act*,[5] and ordered that costs be paid to an agent who was a paralegal.

Other decisions of the Divisional Court have refused to permit paralegals to appear on appeals under the previous *Landlord and Tenant Act*, and have held that the parties must appear in person or by a solicitor.[6] These cases have referred to the need for "special circumstances" before an agent would be allowed to represent a party on an appeal. Yet, in my view, it is significant that at least some of the judges of the Divisional Court have recognized the utility of allowing agents to appear on the first level of appeal.

In passing, I must refer to the reasons of the Divisional Court in *1109222 Ontario Ltd. v. Murad*.[7] There it was observed that the conduct of the paralegal appearing for the landlord on an appeal from a decision of the Ontario Rental Housing Tribunal was, to say the least, unfortunate. If paralegal regulation had been in force at that time, his conduct would have been the subject of an investigation. It is unfortunate that this person, who was put forward as a leading member of a paralegal organization, should have acted in such a manner that his conduct was the subject of severe criticism.

Qualified paralegals should be authorized to appear at the first level of appeal from this Tribunal. It is true that an appeal may set a precedent. However, it seems unnecessary and unrealistic to prohibit licensed paralegals from taking the appeal if they are requested to do so by a member of the

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[3] Unreported (Ont. Div. Ct., File No. V11124/98, January 7, 1999).

[4] Unreported (Ont. Div. Ct., File No. DC 803/92, June 10, 1994).

[5] R.S.O. 1990, c. L.7.

[6] See *Gotlibowicz v. Gillespie* (1996), 47 C.P.R. (3d) 96 (Ont. Div. Ct.) and *Banyasz v. Galbraith* (1996), 94 O.A.C. 75, 7 C.P.C. (4th) 307 (Ont. Div. Ct.).

[7] Unreported (Ont. Div. Ct., File No. 465/98, September 17, 1999).

public. They have demonstrated their competence and awareness of the pertinent issues before the Tribunal.

It was argued by the legal organizations that, if I was to decide to allow licensed paralegals to appear on an appeal, the appeal should only be taken by the same paralegal who dealt with the matter in the first instance. I do not agree with their position. Licensed paralegals have demonstrated their competency both in terms of passing the special examination and in their work before this Tribunal. It is their demonstrated competency that permits them to appear in the first level of appeal from a decision of the Tribunal.

I have been told that the fees of a paralegal would be significantly lower than that of a lawyer taking the appeal. If this is not the case, lawyers will undoubtedly make known their lower fees and their willingness to take these appeals at the lower fees.

iii) Ontario Labour Relations Board

The Ontario Labour Relations Board observed that there are many experienced persons who appear before them who are not lawyers and yet who serve the Board and the public extremely well. They gave as examples former officers of unions or shop stewards who are familiar with their procedure. The CAW - Canada also pointed out that these same people often help individual employees on their procedures before the Board, particularly on grievance hearings.

The Board has a very important function to fulfill. It is the entity that is so often in a position to regulate, arbitrate and determine highly sensitive issues in the volatile field of labour relations. Society relies on this Board to provide speedy, orderly and equitable resolution of disputes in the labour management field. Once again, just as in the case of other specialized tribunals or boards, paralegals seeking to appear before the Ontario Labour Relations Board should be required to pass a special examination demonstrating their competence in this area. Licensed paralegals qualified by examination should be authorized to appear before this Board. However, licensed paralegals should not be authorized to appear on an appeal from a decision of this Board.

It bears repeating that the Ontario Labour Relations Board, rather than having a licensing scheme for paralegals, would prefer to have legislation that would clearly permit it to deal expeditiously and effectively with agents who were dishonest, unreliable incompetent or obstructive. However, for the reasons set out earlier[8] it is preferable to proceed with the licensing of paralegals and, if they are requested, secondary licences.

iv) Ontario Workplace Safety and Insurance Appeals Tribunal

Here too can be found both the unscrupulous, greedy and misleading paralegals who are defrauding the public and the good, competent, dedicated paralegals who are doing excellent work. In a field which lawyers have virtually deserted, competent paralegals are providing much-needed assistance to injured workers and to the Tribunal. The Tribunal in its submission noted that it has installed new expedited procedures. Their procedures and the volume of cases before the Tribunal require that those appearing before it should be knowledgeable. There is no doubt that the work of this Tribunal is extremely important and knowledge of its procedure, essential.

To qualify to practise before this Tribunal, qualified paralegals will have to write an examination to demonstrate their competency. The protection of the public will be assured by the errors and omissions insurance, a compensation fund, a code of conduct and readily accessible discipline procedure. With the competency exam and the protections for the public in place, there should be no further concerns about the competency and reliability of licensed paralegals appearing before this Tribunal.

A special course designed to prepare the paralegal to write the examination can be readily provided by the accredited community colleges. The competency examinations should be designed by the governing body in consultation with members of the Tribunal and the faculty of the accredited community colleges.

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[8] See "B. Appearances Before Specialized Boards and Tribunals" and "C. Secondary Licences", *supra*, this Chapter.

Like the Ontario Labour Relations Board, this Tribunal has observed that laypersons are presently appearing before them. For example, union representatives, those appearing for the Office of the Worker Advisor and the Office of the Employer Advisor, and representatives of legal aid clinics appear before and assist the Tribunal and in its view need not be licensed. This Tribunal takes the position that licensing is not required for these individuals since they are already acceptable to their respective employers. They oppose a licensing system. Rather, they too recommend that they be given wider legislative powers to control all agents.

For the reasons set out in the section pertaining to the Ontario Labour Relations Board, I cannot accept this. A licensing system is the best means of providing protection to the public, assurance of competence and service to the public. This method should not be overly expensive, and will ensure the continuity and fairness in the qualification and licensing procedure.

v) Ontario Municipal Board

This too is an important and specialized board. Nonetheless, in many matters licensed paralegals can be of assistance to the Board and the public, and their participation should be encouraged. The governing body of paralegals in consultation with Board members and the faculty of accredited community colleges can fix the educational requirements and the courses to be provided pertaining to the Board. Similarly, competency examinations for all paralegals seeking to appear before this Board should be set in consultation with Board members, the community colleges and, if feasible, the Law Society of Upper Canada. Decisions of the Ontario Municipal Board may only be appealed to the Divisional Court on a question of law. In these circumstances, licensed paralegals should not be authorized to appear on an appeal from this Board.

vi) Financial Services Commission of Ontario

The Financial Services Commission of Ontario regulates a number of sectors. It has exclusive jurisdiction to exercise the powers conferred upon it by a number of Acts. The work of the Commission that is of interest to this

Review is its jurisdiction pertaining to automobile insurance. The Commission describes this work in these words:[9]

> As a part of its mandate, FSCO [Financial Services Commission of Ontario] has a wide variety of regulatory responsibilities for automobile insurance including the provisions of dispute resolution services to accident victims.
>
> The dispute resolution system at FSCO provides a timely, cost effective service to claimants and insurers involved in personal injury disputes over statutory accident benefits. It as established as a cost-saving and more informal means of resolving disputes without the need to resort to the courts. The range of services provided includes mediation, arbitration, neutral evaluation and appeal.

It is apparent that the Financial Services Commission was established as a cost-saving institution to provide an informal means of resolving disputes without resorting to the courts. Dina Palozzi, Chief Executive Officer and Superintendent of Financial Services, indicated that paralegals have been active in the dispute resolution system at the Commission and, the former Insurance Commission since the introduction of no-fault insurance in 1990. They assist injured persons by completing accident benefit claim forms and acting as their representatives in the mediation, neutral evaluation, arbitration and appeal processes.

According to the Commission's submission, in approximately 80% of the completed mediation cases the injured persons were represented by a law firm. The remaining 20% were represented by paralegals, family members, the claimants themselves or others. In 96% of the arbitration cases, law firms represented the injured party, with the remaining 4% being unrepresented or represented by paralegals. Dina Palozzi repeated the familiar refrain that, while some paralegals serve their clients well, others display a lack of understanding and are incompetent.

The Law Society of Upper Canada and the other legal organizations take the position that paralegals should not take part in any of the dispute resolution proceedings relating to the provision of accident benefits for persons injured in motor vehicle accidents. They submit that this is complicated legislation, which is still evolving, and that it is simply

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[9] Letter to Cory Review from Dina Palozzi dated February 14, 2000.

inappropriate for paralegals to play any role in these proceedings. They argue that statutory compensation for accident benefits is so inextricably tied to the tort action, which is likely in all serious cases, that only a lawyer would know how to deal with the situation. Further they observed that section 398 of the *Insurance Act*[10] appears to prohibit anyone but a lawyer from negotiating the settlement of a claim for damages arising out of a motor vehicle accident. Section 398 provides:

> 398(1) Subject to subsection (2), no person shall, on the person's own behalf or on behalf of another person, directly or indirectly,
>
> (a) solicit the right to negotiate, or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or
>
> (b) hold himself, herself or itself out as an adjuster, investigator, consultor or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.
>
> (2) This section does not apply to a barrister or solicitor acting in the usual course of the practice of law.

I had the benefit of submissions of both Ms. Martin and Mr. Chitra, who have extensive experience in this area. Ms. Martin is the counsel of the Insurance Council of Canada which is a trade association representing almost 97% by premium volume of the property and casualty insurers in Canada. Mr. Chitra was the Director of Legal Services at the former Ontario Insurance Commission for four years, and was responsible for supervising the drafting of the first two versions of the insurance regime now in place in Ontario, including the statutory accidents benefits schedule.

Ms. Martin emphasized that not all claims are complicated. She pointed to the quantum of the claim and the nature of medical injuries as two readily recognizable indicators of complexity. It is Ms. Martin's opinion, based on her experience, that a system of education could be developed to provide individuals such as paralegals with the requisite knowledge to prepare uncomplicated claims as well as to recognize and to refrain from dealing with claims and matters that were beyond their competence.

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[10] R.S.O. 1990, c .I.8.

In both Ms. Martin's and Mr. Chitra's view, there is a significant and useful role for paralegals to play in the processing of insurance claims and the work of the Commission. Their participation would reduce the costs of processing claims and help to keep insurance premiums down for all residents of Ontario.

Ms. Martin noted the important role of insurance adjusters in dealing with the processing of personal injury claims and disputes arising from those claims. She noted that they are an example of laypersons who work effectively in this area and are able to make an effective contribution to the work of the Dispute Resolution Group.

Mr. Chitra indicated that some of the most knowledgeable claims managers and adjusters that he has met in the insurance industry are not lawyers. He stated that there are many experienced paralegals who work in the insurance sector who are knowledgeable and have an important contribution to make. In his opinion there is a useful role for paralegals to play in this area. He too used insurance adjusters as an example of laypersons, who, with proper education, are able to work effectively and helpfully in the day-to-day operations of the Commission.

The establishment of the Financial Services Commission as a cost-saving institution providing an informal means of resolving disputes clearly indicates that there should be a role for competent licensed paralegals. The reference to informality and cost-saving indicates that paralegals, perhaps even more than lawyers, can be helpful to the Commission in attaining these goals. With the appropriate education, they will provide a relatively inexpensive means of processing the majority of claims, which are minor in nature. This tentative conclusion is supported by Ms. Martin and Mr. Chitra. They both observed that many claims which are dealt with by the Dispute Resolution Group of the Commission involve injuries of a minor nature.

The requisite education to qualify paralegals to participate in the dispute resolution system of the Commission will enable them to identify those complex cases where they should not provide assistance to an injured person, but rather must recommend that the injured person consult a lawyer. Failure to take this step could be a breach of the code of conduct of paralegals and constitute unauthorized practice. Undoubtedly, clear criteria will be quickly developed as to when paralegals should recommend that a lawyer be consulted.

I simply cannot agree with the position of the legal organizations that paralegals should not participate in the work of the Commission's Dispute Resolution Group or play any role in the processing of insurance claims. The submissions of those, who by their expertise and experience are in the very best position to know of the usefulness of paralegals in this field, have satisfied me that licensed paralegals who demonstrate their competence by passing an examination should be authorized to participate in the Commission's dispute resolution system. There are many who simply cannot fill out the required forms. There is no reason to prevent the public from having access to what will be a relatively inexpensive service performed by someone familiar with the proceedings.

The public and the Commission should have the benefit of the assistance of paralegals. A competency examination will demonstrate that a licensed paralegal appearing on matters before the Commission's Dispute Resolution Group will have sufficient knowledge to be aware of when a tort action is likely to ensue and to see that a lawyer is consulted. Further, with the requisite education and demonstrated competency, with errors and omissions insurance, a compensation fund, code of conduct and a discipline procedure, together with the ability of the client to assess the account of a licensed paralegal, the public will be well protected.

It follows from this conclusion that I must also recommend that section 398 be amended to permit qualified licensed paralegals to appear before the Commission. Perhaps subsection (2), which provides the exception for lawyers, could be amended to include qualified licensed paralegals acting within the scope of their authorization. In my view, this would be essential in order to ensure public access to justice and to fulfill this Commission's statutory goal of providing "timely cost effective service" to claimants and insurers.

As well, the arbitration order in *Bozena Pelzner and Peter Pelzner and Coseco Insurance Co./HB Group/Direct Protect*[11] concludes that section 398 dates back to the 1930's and should not be used to prohibit paralegals from taking part in proceedings of the Commission and that the Commission

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[11] FSCO A99 - 000860, May 5, 2000.

has the authority to permit paralegals to participate in the proceedings of the commission pursuant to the *Statutory Power and Procedures Act.*[12]

Licensed qualified paralegals should also be authorized to participate in the appeal procedure before the Director of the Dispute Resolution Group, although their appearances in this role may be infrequent. However, licensed paralegals should not be authorized to take any appeal proceedings arising out of the dispute resolution system before the Divisional Court.

vii) Preparation of Construction Lien Claims

There was agreement among both lawyer and paralegal groups that paralegals should be authorized to prepare and file claims for liens, which are to be filed under the *Construction Lien Act.*[13] As well it was agreed that a licensed paralegal should be authorized to act for a lien claimant in court where the claim does not exceed the jurisdiction of the Small Claims Court.

Recommendations 17 to 33:

17. Wherever the empowering statute of any board or tribunal provides that parties may appear by agent, only licensed qualified paralegals should be authorized to appear.

18. All licensed paralegals appearing before a specialized board or tribunal should be required to either pass a special examination which demonstrates their competence in the work of the particular specialized board or be recommended by a specialized board or tribunal for a secondary licence.

19. The secondary licence should be valid for one year and be renewable annually, and the licensed paralegal should be restricted to appearances before the specified board or tribunal.

20. A paralegal who obtained his or her licence after having completed a program in an accredited community college should

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[12] R.S.O. 1990, c. S.22 as amended.

[13] R.S.O. 1990, c. C.30 as amended.

be authorized to appear before any non-specialized board or tribunal.

21. "Grandfathered" licensed paralegals should be required to pass a general examination respecting administrative tribunals in order to appear before non-specialized boards. However, a "grandfathered" licensed paralegal who has passed an examination to appear before one specialized board should not be required to pass a further examination to appear before non-specialized boards and tribunals.

22. Costs may be awarded to parties who are represented by licensed paralegals before provincial boards and tribunals and, where the licensed paralegal is authorized to appear on the first level of appeal from a decision of a board or tribunal, before those appeal courts.

23. Boards and tribunals should be authorized to order costs against a licensed paralegal if his or her conduct is extremely disruptive, misleading, mendacious or unscrupulous.

24. Boards and tribunals should be authorized to expel a licensed paralegal on a temporary basis where the behaviour of the licensed paralegal is incompetent, dishonest or disruptive.

25. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Rental Housing Tribunal.

26. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal in the first instance from the Ontario Rental Housing Tribunal.

27. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to both assist injured parties in preparing their accident claim forms and to participate in the mediation and

arbitration work of the Dispute Resolution Group of the Financial Services Commission of Ontario.

28. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal before the Director of the Dispute Resolution Group of the Financial Services Commission of Ontario.

29. Section 398 of the *Insurance Act* should be amended to permit authorized licensed paralegals to appear before the Dispute Resolution Group of the Financial Services Commission of Ontario.

30. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Labour Relations Board.

31. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Workplace Safety and Insurance Appeals Tribunal.

32. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Municipal Board.

33. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before any other specialized board or tribunal of the Province of Ontario.

V

AREAS OF PERMISSIBLE PRACTICE - IMMIGRATION AND REFUGEE BOARD OF CANADA

Mr. Gary Yee, Deputy Chair of the Immigration Appeal Division, advised that the Immigration and Refugee Board of Canada is the largest federal administrative tribunal. It hears over 40,000 cases per year, 20,000 or more of which are heard in Ontario. It is composed of three divisions: the Convention Refugee Determination Division ("Refugee Division"); the Immigration Appeal Division ("Appeal Division"); and the Adjudication Division. The Refugee Division deals exclusively with the determination of claims to refugee status made within Canada. The Appeal Division hears appeals against deportation orders and refusals of sponsored applications for permanent residence. The Adjudication Division conducts detention reviews and immigration inquiries for certain categories of people believed to be inadmissible or removable from Canada. In Mr. Yee's opinion, their hearings are simple.

Mr. Paul Aterman is Assistant Deputy Chair of the Appeal Division of the Immigration and Refugee Board of Canada. He confirmed that the Refugee Division deals with the largest volume of cases and that there is Legal Aid funding for most, but not all, refugee claimants. The Refugee Division examines the claims of persons who seek to establish that they have a well-founded fear of persecution in their country of origin because of their race, religion, nationality or membership in a particular social or political group.

Mr. Yee pointed out the extremely significant consequences which can result from proceedings of the Immigration and Refugee Board. They include refugee claims in situations where individuals can be sent back to their country of origin. As well, these hearings may result in the refusal to admit family members to Canada and the removal from Canada of permanent

residents. In Mr. Yee's opinion, the consequences of these decisions are more significant than a sentence of incarceration. He pointed out that this is a very specialized field. It is his opinion and that of the Board that paralegals should continue to appear before it. He stated that, for the most part, paralegals now conduct themselves in a professional manner, although he agreed that there are some paralegals who are a disgrace. He and his Board strongly support the concept of the regulation of paralegals.

The lawyers' organizations, with the exception of the Law Society of Upper Canada, are uniformly opposed to paralegals appearing on any immigration matters. Although it was certainly not supportive, the Law Society of Upper Canada did not specifically oppose the activities of licensed paralegals appearing before this Board. In my opinion, it is very significant, if not determinative, that the members of the Immigration and Refugee Board wish to have paralegals appear before the Board, and expressed the opinion that some of the paralegals are excellent and that many others are efficient, knowledgeable and dedicated. As well, it was said to be most helpful that some paralegals are able to converse with people appearing before the Board in their native language.

The importance of this Board is obvious. Not only does it deal with the future of individuals who are in Canada or seek to come to Canada, but with the future composition of Canada itself. The members of the Immigration and Refugee Board are rightly of the view that there has to be a form of regulation and licensing of paralegals. Licensing would ensure appropriate education, competency and protection of the public.

With the benefit of the submissions of members of the Immigration and Refugee Board, I can confidently conclude that there is a very important and useful role for paralegals to play in this field. It is obvious that they must be educated and that they must pass an examination to demonstrate their competence to appear before this Board.

Once again, the governing body, in consultation with members of the Board and members of the faculty of the accredited community colleges and, if they wish to participate, the Law Society of Upper Canada, should develop the curriculum for education and the content of the competency examination.

However, I would suggest that with education and competency assured and the public well protected by errors and omissions insurance and a compensation fund, licensed paralegals should be authorized to appear before this Board in Ontario. Licensed qualified paralegals can provide a very useful service to the public and to this Board. Once there are available licensed paralegals who have proven their competency by examination, I would hope that it could come to pass that they will eventually be the only fee charging agents appearing before the Board in Ontario.

Obviously, it is difficult before a decision is rendered by the Supreme Court of Canada in *Law Society of British Columbia v. Mangat*[1] to make a recommendation regarding paralegals. I can do no more than make suggestions regarding the appearance of licensed competent paralegals before this Board.

Suggestions

In summary, I make the following general suggestions:

1. **Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the three divisions of the Immigration and Refugee Board of Canada in Ontario, namely the Convention Refugee Determination Division, the Immigration Appeal Division and the Adjucation Division.**

2. **The Immigration and Refugee Board of Canada should require agents appearing before them in Ontario to provide them with the evidence that they are licensed and have passed the special examination for the Immigration and Refugee Board of Canada.**

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[1] (1998), 48 Imm. L. R. (2d) 170, [1999] 6 W.W.R. 588 (B.C.C.A.).

VI

AREAS OF PERMISSIBLE PRACTICE - SMALL CLAIMS COURT

Both the lawyers' organizations and paralegals were in agreement that proceedings in the Small Claims Court was an appropriate area of practice for paralegals. I whole-heartedly agree. For the protection of the public and the benefit of judges sitting in the Small Claims Court, the agents appearing before them should be licensed and qualified. In order to qualify, they need to pass a competency examination. That examination may be designed by the governing body of paralegals in consultation with a judge sitting in the Small Claims Court, faculty of the accredited community colleges and the Law Society of Upper Canada.

I was assisted in reaching this conclusion by the most helpful submission of Justice Zuker, who earlier in his career was a judge of the Small Claims Court. There is no doubt that in this area, as in many others, so-called paralegals are appearing who are incompetent, unreliable and occasionally dishonest. There are also many paralegals who are competent, dedicated and reliable. For the protection of the public, I would trust that licensed qualified paralegals, together with articling students, lawyers and law students associated with legal aid clinics and student legal aid societies should be the only agents for fee appearing in Small Claims Court.

The submissions demonstrated that paralegals have on occasion taken appeals from decisions of the Small Claims Court. The lawyers' organizations vehemently object to this. However, from the transcripts of appeals in which paralegals appeared, it is evident that they were both competent and reliable.[1] Further, the submissions demonstrated that the fee paralegals charged for an appeal was reasonable, probably much less than a lawyer could afford to charge.

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[1] *Verwaayen v. Neale*, unreported (Ont. Small Claims Ct., File No. 1779/99, January 4, 2000).

Despite the protestations of the lawyers' groups, I can see no valid reason for prohibiting qualified, licensed paralegals from appearing on the first level of appeal. By their qualifying examination and their work in Small Claims Court, paralegals have established their competence in this field. It is true that occasionally the decision rendered on an appeal may become a precedent. Yet licensed paralegals should be able to proceed with an appeal from that court, if that is what the client desires.

It was also argued by some of the lawyers' groups that, if I came to this conclusion, the right to argue the appeal should be limited to the paralegal who took the proceedings in the Small Claims Court. In my opinion, there is no reason to impose such a restraint. This is an area in which the public can benefit from the services of a paralegal at what appears to be a much lower rate than can be provided by lawyers.

If this is not correct, no doubt lawyers will make it known that they are prepared to take appeals from the Small Claims Court at a rate as low as or lower than that of the paralegals. Perhaps they can do this on the basis that the work will serve as an education course for young lawyers. However, this will ultimately be a question for the market to resolve.

Recommendations 34 to 36:

34. **Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Small Claims Court.**

35. **Licensed paralegals who are qualified to appear in the Small Claims Court should be authorized to take an appeal at the first level from a decision of that Court.**

36. **Clients represented by licensed paralegals should be entitled to costs in the Small Claims Court or on the first level of appeal from that Court.**

VII

PERMISSIBLE AREAS OF PRACTICE - PROVINCIAL OFFENCES

The paralegal organizations all contended that they should be authorized to advise their clients and appear on their behalf on all offences created pursuant to provincial statutes. The Law Society of Upper Canada would limit the appearance of paralegals to provincial offence cases where the maximum fine does not exceed $6,000 and where there is no possibility of imprisonment. The Canadian Bar Association - Ontario and the County and District Law Presidents' Association both took the position that many of the provincial offences carry serious sanctions and involve complex legal issues including issues under the *Canadian Charter of Rights and Freedoms*. As a result they submitted that paralegals should not be permitted to appear on any provincial offence.

The Advocates' Society suggested that, if there was a possibility of incarceration, other than for non-payment of a fine, paralegals should not be allowed to appear. The Criminal Lawyers' Association proposed that paid agents such as paralegals should be permitted to appear. The lawyers' organizations stated that they would not alter their positions.

I have carefully considered the submissions of the lawyers organizations. However, apart from the submission of the Criminal Lawyers' Association on this issue, I cannot agree with them. Other submissions have completely satisfied me that there should be no limitation placed upon licensed paralegals in their appearances and the prosecution and defence of provincial offences.

Many of the paralegals who made submissions on this issue and who appear on these offences are former police officers with considerable experience in this area. One, the past president of the Paralegal Society of Ontario and the past president of POINTTS, David Goddard, was a police

officer in Edmonton. After he resigned as a police officer, he acted as a paralegal for 12 years. Mr. Goddard established the first company in Alberta to provide services of agents for defendants charged with provincial traffic offences. During a ten-year period, Mr. Goddard's Alberta company provided assistance to thousands of defendants. During that time only one person was incarcerated for a period of three days on a careless driving charge. In that case the defendant had hit a police officer while he was on duty.

Mr. Dray made submissions as well. He is a paralegal and has worked for nearly 13 years undertaking the prosecution of provincial offences for the City of Brampton. It is true that the Brampton work is done under the supervision of a lawyer. However, he has also been independently retained by a number of small communities who do not have a legal staff to do their prosecutions of provincial offences. That work is done without the supervision of a lawyer. His reputation is that of a thorough, competent and responsible prosecutor. If prosecutors of these offences are paralegals, then there is no logical reason why competent, responsible licensed paralegals cannot act for the defence. It was Mr. Dray's experience and that of all the other paralegals, confirmed by the judges hearing these matters, that it is rare for a lawyer to appear on these offences.

There can be no doubt that the public should have access to the services of paralegals in this field. If the consequences of a conviction are severe or drastic enough, members of the public may decide to retain a lawyer to protect their interests. However, there is no reason why they should not have the option of selecting a licensed paralegal rather than a lawyer for these matters. The work of responsible paralegals is appreciated by the courts. They are competently handling both the prosecution and the defence and should be allowed to continue to do so in all provincial offences.

Further, licensed paralegals who have demonstrated their competence by examination and by their work in the Ontario Court of Justice should also be permitted to appear on the first level of appeal. Their demonstrated competence justifies taking this step. The authority to appear on appeals should extend to all licensed authorized paralegals and should not be limited to the paralegal who appeared at the trial.

All licensed paralegals, whether new graduates or those with years of experience wishing to practise in this field, will have to demonstrate their

competence by writing an examination. In this field, as in others, both the curriculum and the examination should be designed by the governing body in consultation with the justices hearing provincial offences, members of the Law Society of Upper Canada, if this is feasible, and the faculty of accredited community colleges.

Once again, I would like to commend the members of POINTTS and the Institute of Agents at Court. Although their members are very experienced in this field, they readily agreed to submit to an examination to demonstrate their competence. This action will instill confidence among members of the public.

Recommendations 37 to 38:

37. **Licensed paralegals duly qualified by passing a special examination should be authorized to appear and prosecute and defend provincial offences in the Ontario Court of Justice.**

38. **Licensed paralegals duly qualified by passing a special examination should be authorized to appear at the first level of appeal from a conviction or acquittal on a provincial offence in the Ontario Court of Justice, and their clients on such appeals may be awarded costs.**

VIII

AREAS OF PERMISSIBLE PRACTICE - CRIMINAL OFFENCES AND CRIMINAL PARDONS

A. Criminal Offences

Section 800(2) of the *Criminal Code*[1] provides that a defendant charged with a summary conviction offence may appear personally or by counsel or agent. Section 802(2) states that such a defendant may examine and cross-examine witnesses personally or by counsel or agent. Thus the Code specifically provides for the appearance by agents on summary conviction offences.

In addition, the Code provides for a large number of hybrid offences. These are offences in which the Crown can elect to proceed either summarily or by way of indictment. In 1994 and 1997,[2] amendments were made to the *Criminal Code* which significantly increased the number of hybrid offences. Thus there are at present many serious offences which can proceed summarily. As well, additional amendments are being considered that would increase still further the number of hybrid offences. This will result in a great many more very serious offences proceeding by way of summary conviction.

The increase in the number of hybrid offences is of particular significance in light of the submissions made by Sara Welch, president of the Ontario Crown Attorneys' Association, and Justice Paul H. Megginson on behalf of the Ontario Conference of Judges. They reported that, in Ontario,

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[1] R.S.C. 1985, c. C-46 as amended.

[2] See *Criminal Law Amendment Act, 1994*, S.C. 1994, c. 44, and *Criminal Law Improvement Act, 1996*, S.C. 1996, c. 18.

the vast majority of hybrid offences proceed summarily. Statistics provided by the Ontario Court of Justice indicate that 98% of the criminal case load in Ontario is finally disposed of in the Ontario Court of Justice.[3] Thus offences such as sexual assault (s. 271); child pornography (s. 163.1); assault with a weapon (s. 267); kidnapping (s. 279); assault causing bodily harm (s. 267); impaired driving (s. 253); possession of a weapon obtained by the commission of an offence (s. 96); making an automatic firearm (s. 102); and the sexual exploitation of a young person or a person with a disability (ss. 153 and 153.1) may, in Ontario, all proceed summarily.

The proposed amendments would encompass, as hybrid, all indictable offences where the maximum penalty is less than 14 years or life imprisonment. With these amendments a great many more offences which now proceed by indictment could proceed summarily. Examples of a few of the indictable offences where the maximum penalty is less than 14 years or life imprisonment include: procuring for the purposes of prostitution (s. 212); causing bodily harm by criminal negligence (s. 221); dangerous operation of motor vehicle causing bodily harm (s. 249); impaired driving causing bodily harm (s. 255); abduction of person under 16 (s. 280); procuring marriage (s. 292); possession of incendiary material (s. 436.1); extortion by libel (s. 302); fraudulently taking cattle (s. 338); criminal libel (s. 300); interference with a dead human body (s. 182); advocating genocide (s. 318); possession of break-in instruments (s. 351); arson for a fraudulent purpose (s. 435); arson by negligence (s. 436); and counterfeiting (s. 370).

I can understand and appreciate the position of the federal government in widening the range of hybrid offences. No doubt this is effective in doing away with preliminary hearings in many cases and reducing the costs of the provision of criminal justice. As well, it allows agents to appear in isolated communities where it is difficult to obtain the services of a lawyer at all. However, I must consider the effect of permitting paralegals to appear in all summary conviction proceedings. Certainly the submissions provide compelling reasons for strictly limiting their appearances in these matters.

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[3] Submissions of the Ontario Judges' Association, Ontario Family Law Judges' Association, and the Ontario Provincial Court (Civil Division) Judges' Association, Fourth Triennial Provincial Judges Remuneration Commission (1998).

In light of the present situation and the reforms being contemplated, should paralegals be permitted to appear as agents on any summary conviction offences? Some of the paralegals contend that they should be authorized to appear on all summary conviction offences. Legal organizations, including the Ontario Conference of Judges, several justices of the Ontario Court of Justice, the Criminal Lawyers' Association and the Ontario Crown Attorneys' Association are all of the view that they should not.

It is true that Dr. Ianni in his report in 1990[4] recommended that paralegals be permitted to appear as agents in summary conviction offences. He approached the question with his usual careful consideration. However, I wonder if he would have reached the same conclusion in light of the amendments to the *Criminal Code* made subsequent to his report and the very negative submissions I have received. To permit paralegals to appear in summary conviction offences would mean that, as agents, they would be defending serious criminal offences with very grave consequences, including imprisonment for up to 18 months.

A great deal of importance is properly is attached to criminal cases. It is the criminal law that is the basis for almost all our human rights statutes. The manner in which a criminal case is conducted is a reflection of the society of a country. It is how we treat the least worthy citizen that indicates how we will eventually treat every citizen. It is trite to observe that a *Criminal Code* conviction has serious consequences. It may result in imprisonment. It may affect employment. It may prevent admission to other countries. Above and beyond that, there is a special stigma which flows from a *Criminal Code* conviction that is far greater than that which would flow from a conviction on any provincial offence.

There is, as well, a particular complexity to many criminal cases. In order to properly defend an accused person, a counsel or agent must have a thorough knowledge not only of the *Criminal Code* and the laws of evidence, but also of the possible effects of the *Canadian Charter of Rights and Freedoms*, for example, upon the actions of the police. Further, it can never

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[4] R.W. Ianni, *Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990).

be forgotten that at the end of a criminal trial the accused faces the very real possibility of a jail term.

In summary, then, the consequences of a *Criminal Code* conviction and the stigma that goes with it, coupled with the complexity of many criminal trials, make it unlikely that accused persons or society would benefit from paralegals conducting the defence for all summary conviction offences. It is true that arrangements could be made for special courses in criminal law, procedure, evidence and the *Charter*. Yet there is such a complexity to many criminal trials that it is impossible to provide an adequate education over a short period of time. Quite simply, the training could not be sufficient to enable a paralegal to conduct a proper defence of most summary conviction cases.

The Ontario Court of Appeal considered the question of agents appearing on criminal offences in *R. v. Romanowicz*.[5] In essence the court found that the agent in that case had not been so incompetent that the conviction should be set aside. Nonetheless, a passionate, well-articulated plea was made for the regulation of paralegals. I trust that the recommendations of this Report will respond to that impassioned plea.

Are there any summary conviction offences for which a paralegal might be qualified to represent a defendant? There are approximately 40 offences in the *Criminal Code* that are true summary conviction offences. That is to say, there cannot be an election by the Crown to proceed by way of indictment. These offences are clearly considered by Parliament to be of lesser gravity. However, even in this group some serious offences are included. These would include offences in relation to members of the RCMP (s. 56); carrying a weapon while attending a public meeting (s. 89); impersonating a peace officer (s. 130); indecent acts (s. 173); keeping a gaming or betting house (s. 201); keeping a common bawdy house (s. 210); intimidation (s. 423); and injuring or endangering animals (s. 445).

However, there are other summary conviction offences which are truly minor in nature, where the stigma attached to a conviction would be minimal. It would be appropriate, in my view, for licensed paralegals to

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[5] (1999), 45 O.R. (3d) 506 (C.A.).

appear in the following very limited range of cases: vagrancy (s. 179); fraudulently obtaining food, beverage or accommodation (s. 364) and transportation (s. 393); using slugs and tokens (s. 454); defacing coins (s. 456); duty to safeguard on ice (s. 263); failure to keep watch on a person towed (s. 250); falsifying employment record (s. 398); and nudity in a public place (s. 174).

It is possible that with the passage of time some additional minor summary conviction offences might be added to the list. Yet this would be a matter for consideration by the Attorney General in consultation with justices of the Ontario Court of Justice, the Criminal Lawyers' Association and the governing body of paralegals. For the present my recommendation would not go beyond the specified list of offences in which licensed paralegals might appear.

To undertake the defence of any other *Criminal Code* summary conviction offence would constitute unlawful practice by a licensed paralegal. The summary conviction offences suggested above are not as serious as others, and a person charged with one of them might not qualify for Legal Aid or be able to afford a lawyer. The engagement of licensed paralegals in these circumstances would extend the public's access to justice.

Mr. Dahn Batchelor made submissions in support of paralegals appearing in all in summary conviction offences. He has appeared in many hybrid offences. There is no doubt that Mr. Batchelor has made an extensive study of the criminal law. He has taken a university course in criminology, and undertaken specific research on the issue of compensation for victims of crime. He has been asked to appear before a United Nations committee on this subject.

However, no matter what may be the extent of Mr. Batchelor's studies, I do not think they would adequately qualify him to undertake the defence of a complex criminal case. Even the defence of a charge of driving while impaired, which he has undertaken, has become very complex, and I cannot accept his submission that it is an example of an offence that should be exempted from the proposed general prohibition. In this vein, it is significant to recall that Brian Lawrie, a former police officer, made submissions on behalf of POINTTS. He noted that even former officers who

had experience as breathalyzer technicians would not take cases where the charge was driving while impaired because of their complexity.

Some submissions suggested that the ability of paralegals to appear as agents in summary conviction offences should be extended to cases where the maximum penalty did not exceed six months. I cannot accept this submission in light of the complexity and seriousness of some of the cases that provide a penalty of only six months. Examples of offences where the maximum penalty on a summary conviction is six months include: indecent acts (s. 173); intimidation (s. 423); possessing volatile substance (s. 178); taking a motor vehicle without consent (s. 335); impersonating a police officer (s. 130); injuring or endangering animals (s. 445); and causing a disturbance (s. 175). Paralegals simply cannot become qualified to take these cases.

Justices of the Ontario Court of Justice provided examples of transcripts where the conduct of paralegals certainly did not assist the defendant and, as well, created very difficult problems for the court.[6] The experience in Ontario clearly indicates that the role of the paralegals as agents on summary conviction offences should be very limited. However, this does not mean that unpaid agents cannot appear before the court. Undoubtedly there will be family members or friends who will always be pleased to act as agents of a defendant without fee.

Paralegals should not be authorized to undertake an appeal of any of the summary conviction offences in which they are authorized to appear at any level.

B. Pardons

There is a consensus among all groups that paralegals should be permitted to do all that is required to prepare and process an application for a pardon. This is a task that paralegals have been performing satisfactorily for some time. Licensed paralegals should be authorized to continue to do so.

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[6] See *R. v. Mohammed-Jaferi*, transcript of court proceedings, Ont. C.J., Bovard J., January 24, 2000.

Recommendation 39:

39. Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Ontario Court of Justice only in the following specified *Criminal Code* summary conviction offences:

- **vagrancy;**
- **fraudulently obtaining food, beverage or accommodation;**
- **fraudulently obtaining transportation;**
- **using slugs and tokens;**
- **defacing coins;**
- **duty to safeguard on ice;**
- **failure to keep watch on person towed;**
- **falsifying employment record; and**
- **nudity in a public place.**

IX

AREAS OF PERMISSIBLE PRACTICE - FAMILY LAW AND CHANGE OF NAME APPLICATIONS

A. Family Law

Family law is a particularly sensitive area. There are obviously lawyers in this field who are extremely able and dedicated, and who truly desire to serve the public well and to protect it. There are as well paralegals who have made a study of this field and who are also dedicated to the service of the public.

It must be remembered that family law is fraught with complexities and replete with legal pitfalls. There is no doubt that, in an ideal world, anyone involved in a family law matter should be able to consult a competent lawyer on every contentious issue as it arises. Those involved in matrimonial disputes are particularly vulnerable. They are in need of good and courageous advice. All too often love has turned to hatred and all too often the parties have reached the stage where they can no longer think rationally. There is frequently a desire to hurt the opposite party. This leads to a failure to recognize the needs of children and, on occasion, the children are unfortunately used as pawns in the war between the parents. In some of the submissions staggering and depressing statistics were put forward pertaining to the breakup of families and divorce. There can be no doubt that the divorce rate is high and its consequences constitute a very significant social problem.

Relatively recent regulations set out the guidelines for child support and maintenance.[1] Yet members of the Bar who made submissions on this

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[1] Child Support Guidelines, O. Reg. 391/97.

something sorely amiss when such a large social problem is further complicated. It may be that the guidelines are at fault or the legislators, or the judiciary or the lawyers, or a volatile and corrosive mixture of all of these elements. Yet the fact remains that what should have become simpler and more straightforward as a result of the guidelines has, according to members of the Family Bar, led to procedures which have become more complex, more time-consuming and more expensive.

This increased complexity must add to the parties' costs of family law proceedings and to greatly increased frustration and delays. The parties, as well as their children, are suffering greatly as a result. It is a wonder that society tolerates this tragic situation. Perhaps the public would embrace a greater rigidity in the guidelines and their interpretation in order to avoid uncertain, costly and lengthy litigation. Litigation of this sort is a recipe for financial bankruptcy, mental illness and dysfunctional families. It is putting children at risk of lasting injury.

The Province of Ontario and the Family Bar have worked together diligently in an attempt to alleviate the situation. They are to be commended for their efforts. Under the inspired and dedicated direction of recently retired Justice George Walsh, many members of the Family Bar have given unselfishly and unstintingly of their time and knowledge. For example, it was obvious from the submissions that Hilary Linton and David Jarvis, both dedicated members of the Family Bar, have given a great deal of their time for little, if any, compensation, in an effort to educate members of the public in matters of family law and its procedures. They have laboured valiantly to alleviate the unfortunate situation. However, the fact remains that society appears to be struggling with an unnecessarily complex system that is becoming still more complex. There is an urgent need for reform in this area.

Divorce and separation are a significant part of today's society. The role of the single parent, usually the mother, has become even more onerous.[2] For the sake of the children, who are the future of Canada, the procedures for ascertaining child and spousal support must be simplified, made more expeditious, less expensive and provide greater certainty. If a divorce is required to enable the parties to get on with their lives, it should be as

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[2] Statistics Canada, 1996 Census *Nation* tables, *Census families in private household by family structure, 1991 and 1996 Censuses.*

straightforward and inexpensive as possible, and still protect the rights of children and provide for their maintenance.

The members of the Bar stressed that there is no such thing as a simple divorce and that paralegals should not be permitted to proceed with an uncontested divorce. Later this position was somewhat softened, and some members of the Bar agreed that if there was a recent separation agreement in place, that is, one that had been signed within 90 days of the commencement of the divorce proceeding, paralegals could handle the divorce.

It was contended, as a general rule, that divorce proceedings should not be commenced without an opinion from a lawyer that it is appropriate to proceed. It seems a shame that clients who have undergone the stress and trauma of a separation and paid for the negotiation and completion of a separation agreement, should find it so out of date after 90 days that they cannot proceed with an uncontested divorce. Perhaps it is just another symptom of the need for reform in this area of the law.

I see no reason why licensed paralegals should not be authorized to undertake uncontested divorce proceedings in any one of three circumstances: first, where the parties have no children and no significant assets or the assets are jointly held, and if there is no need for, or no issue outstanding, as to spousal support; second, where the proceedings are commenced within one year of the execution of the separation agreement which resolves all collateral concerns; third, where there was a court order resolving all of the ancillary issues granted within one year of the commencement of the divorce action. In any of these circumstances, licensed paralegals should be entitled to undertake uncontested divorce proceedings.

If a separation agreement or court order is more than one year old, then it unfortunately appears to be essential for the protection of the parties that they return to a lawyer to have the separation agreement reviewed and to certify that it is still in order to proceed with the divorce. This is still not a happy situation. It requires parties who have gone through the stress and expense of obtaining a court order or separation agreement to again see a lawyer one year later to ensure that it is appropriate to proceed with the divorce. It is the uncertainty which has been built into what should be an inexpensive and simple system that makes this apparently repetitious

attendance on a lawyer necessary. It is a sad commentary on the present state of family law.

Is there other work in this field, for example, drafting separation agreements, that can be undertaken by paralegals? I would be opposed to a licensed paralegal drafting a separation agreement. This requires a sound knowledge of the law of property and contract law as well as family law. Quite simply, it is too complex an area for licensed paralegals. With that said, submissions were made that emphasized the unsatisfactory situation that presently exists in this area.

Paralegals gave examples of parties who did not qualify for Legal Aid yet could not afford to retain a lawyer. They had agreed upon the terms of a separation agreement, but because of their financial distress refused to retain or consult a lawyer. These were parties with very little in the way of assets and a salary as their only means of income, who had agreed upon the terms of custody and access. They are representatives of an all too prevalent social problem. They should have access to some small measure of legal assistance. They may not require the services of a lawyer, but the services of a paralegal might meet their needs.

Yet somehow the system has become so complex that I am concerned that if paralegals were authorized to prepare separation agreements in these circumstances, their errors and omissions insurance might become a prime target for their clients. At this stage of the development, or perhaps I should say the deterioration, of family law, I cannot recommend that paralegals be authorized to prepare separation agreements. If in the future there has been reform and greater certainty has been achieved in this area, licensed paralegals should be authorized to draw separation agreements in these restricted, uncomplicated situations. This would broaden the access to justice of vulnerable people.

There are indications that licensed paralegals might play a helpful role in other areas of family law. For example, Justice Zuker stated that in his court, which is located in North York, parties were unrepresented in 50% to 70% of the cases. Justice Brownstone, whose court is located in the East Mall, reported that in 75% to 85% of his cases the parties were unrepresented. From this it can be inferred that many of the most vulnerable people have no representation or assistance whatsoever in their family law

problems. I was told that court employees are prohibited from assisting parties in any way, even in the preparation of the requisite forms.

It appears that lawyers are not present to advise and assist these vulnerable people, either in the completion of their forms or the presentation of their cases. It follows that, in these circumstances, there should be a place for licensed paralegals to assist the public and the court. Of course this work could only be undertaken by those licensed paralegals who had received special training and demonstrated competence in family law through an examination.

The unrepresented parties described by Justices Zuker and Brownstone are often people who are intimidated by any forms, even the simplest, and by any court procedure, even the most straightforward. They may have very little in the way of formal education and often have difficulty with either official language. These are among the most vulnerable people in our society. They desperately need assistance and none is forthcoming. Yet the position of the lawyers' organizations is that they should be denied any help from licensed paralegals. I find it very difficult to accept this submission.

If Legal Aid cannot provide a lawyer, perhaps it could provide, at a rate significantly lower than that of a lawyer, a licensed paralegal who could assume many, if not all, the functions of a duty counsel. I would suggest that a licensed paralegal with the required demonstration of competence in this field could provide valuable assistance to the parties in these cases. Statistics Canada indicates that, for the majority of Canadians the sole source or major source of income is their salary.[3] If the separating parties have few if any assets, and their only income is derived from wages, then the licensed paralegal working in a role like that of a duty counsel should be authorized to advise the separating parties with respect to child and spousal support.

It is apparent that in these courts where the need is great, there is very limited access to duty counsel. Any help would be appreciated, whether it is from a trained social worker or a competent licensed paralegal who has completed a specialized course in family law. That course must include instruction pertaining to support guidelines to assist those licensed paralegals

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[3] Census of Canada, 1996, Cat. 95 F0248XDB-96001, extract.

who may act in a role comparable to duty counsel. The course should as well include instruction on the basic principles applicable to custody and access in order to enable a paralegal to adequately cope with the support guidelines.

The parties would be, as a rule, unable to afford to pay the licensed paralegal. Yet if some minimal funding was provided by or through Legal Aid, licensed paralegals could act in a role comparable to that of a duty counsel. This would be of inestimable assistance to the parties and the presiding justice. It is apparent that such a system could be instituted.

Nye Thomas, Policy Director, Legal Aid Ontario, provided helpful information regarding paralegals and Legal Aid. At present, paralegals act as duty counsel in the Ontario Rental Housing Tribunal. These paralegals are employees of Legal Aid Ontario and are paid a yearly salary. It is useful to compare the hourly rates of paralegals and lawyers in developing my proposals. Under the Legal Aid tariff, supervised paralegals are paid at an hourly rate of $23.[4] From a cost point of view, this compares favourably with the hourly rate paid to private lawyers who attend as duty counsel, which is $57 plus a $40 per day appearance fee.[5]

It is true that currently only paralegals who are employees of Legal Aid Ontario do duty counsel work. This is required, since the *Legal Aid Services Act, 1998*[6] prohibits direct payments to independent paralegals. I would think that licensed paralegals who have demonstrated their competence could be engaged to act as duty counsel in the Ontario Court of Justice, and should it become appropriate in the future, before the Superior Court of Justice. They should be recognized and authorized to perform this desperately needed service.

It is interesting to consider the job criteria set out for duty counsel and paralegal staff at the Thunder Bay and London Legal Aid offices in Ontario. A few of the items from each list have been selected, but all of them could be readily applied to paralegals. A licensed paralegal carrying out these

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[4] Regulations under the *Legal Aid Services Act, 1998*, O. Reg. 107/99, Schedule 3, item 1.

[5] *Ibid.*, Schedule 4, item 1.

[6] S.O. 1998, c. 26, s.14 (1), (4).

functions would be of great assistance to the Ontario Court of Justice. These criteria are as follows:

- advising persons about court procedures and preparing and reviewing documents to be filed in court;
- preparing and drafting all documents in family law and child protection proceedings;
- assisting in case management procedures and evaluation of legal issues;
- performing searches and commissioning affidavits of clients;
- speaking to matters at court and interviewing clients to gather case information; and
- arranging for the service of documents and filing materials in courts as well as keeping track of all time limits for the serving and filing of these documents.

The situation presented is tragic. I suggest that licensed paralegals acting in a role comparable to that of duty counsel could provide a useful service to the courts and parties. This is a situation where some advice and assistance is far better than none. All I can do is urge that Legal Aid consider utilizing qualified licensed paralegals to act in a role comparable to that of a duty counsel.

Hiring a licensed paralegal rather than a lawyer on an hourly basis to act as duty counsel would be significantly less expensive than hiring a lawyer. At their lower rate, licensed paralegals could economically provide service to people both below and somewhat above the Legal Aid guidelines, which are extremely low. The formula for fixing the guidelines is a little complicated. Suffice to say that, for a single person to qualify, income must be less than $16,000 and, for a family of four, less than $40,000. It is readily apparent that many vulnerable people cannot qualify for Legal Aid. As a result, they are without advice or assistance of any kind. It is a situation that cries aloud for amelioration.

I recognize that the areas of activities in family law in which licensed paralegals could participate are very restricted. Yet if they are authorized, paralegals will fulfill a pressing need of our society. I will therefore recommend, first, that licensed, qualified paralegals be authorized to appear as duty paralegal counsel in Ontario Court of Justice. The recommendation will require an amendment to the *Legal Aid Services Act, 1998* to permit payment to licensed authorized paralegals acting in this role. Second, I recommend that licensed paralegals be authorized in the limited circumstances outlined earlier to undertake and complete the proceedings required in an uncontested divorce.

I note that there have been decisions[7] made pursuant to Rule 4 of the Family Law Rules[8] which prohibit paralegals from appearing in court. The grounds put forward for refusing to hear paralegals are these: paralegals are not subject to a code of ethics; they have no errors and omissions insurance; they have no solicitor/client privilege; and they lack the training, education and experience to properly represent clients. It can be readily seen that, if the recommendations made in this Review are adopted, all the concerns expressed in these cases will indeed have been satisfactorily answered. Licensed paralegals will have the requisite education; a code of ethics; discipline procedure; errors and omissions insurance; and a compensation fund. The objections upon which these decisions were founded will have disappeared.

It is true that some paralegals sought authorization to work in additional areas of family law. For example, Mr. Tony Guspie explained that he had done a great deal of reading and studying in this area. He has purchased an extensive library dealing with family law matters. He advises only men and does so with regard to their rights to custody and access, the division of family property and, presumably their obligations and rights in connection with support and maintenance. I have no doubt that Mr. Guspie has studied the subject extensively and that the advice he has given has been enthusiastically welcomed by his clients.

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[7] See *Stone v. Stone*, unreported (Ont. Fam. Ct., File No. F.C. - 98 - 001759 - D, February 24, 2000); *Simmons v. Boutlier*, unreported (Ont. Fam. Ct., File No. 8008/99, February 10, 2000); *Guy v. Guy*, unreported (Ont. Fam. Ct., No. 7776/99, March 22, 2000).

[8] O. Reg. 114/99.

Nonetheless, I worry about a paralegal giving advice of this sort. It is the custody and access cases that determine, not only the best interests of the children involved, but also to some extent the future of our country. The best interests of the child will always be paramount. A consideration of children's best interests must include custody and access entitlements of the father. Questions of child custody, access and support are of fundamental importance. Yet they raise legal issues of great complexity, very often involving the use and division of property both real and personal. The more complex the situation, the more likely a mistake will be made in giving advice.

Only a lawyer should give advice in this area. The advice required in a complex situation is very different from the simple straightforward advice I would expect that a duty paralegal would be required to give in situations where there are no significant assets and the sole income is from employment. Further, justices of the Ontario Court of Justice observed that, in the latter situations, custody and access have very often been agreed upon.

Mr. Guspie argued that every individual enjoys a *Charter* right to choose his or her agent or representative. His position is that the choice cannot be limited to lawyers. It is not for me to resolve this question. Yet it may be difficult to argue that a client has an absolute constitutional right under section 7 of the *Canadian Charter of Rights and Freedoms* to choose a paralegal rather than a lawyer. It would not be easy to prove that this choice arises out of the need for fundamental justice or the protection or security of the person. It may well be significant that the United States appears to limit appearances in court to attorneys at law or self-represented parties. [9]

B. Change of Name Applications

There is a consensus among lawyers and paralegals that a licensed paralegal should be authorized to take all the proceedings necessary in order to change a name under the *Change of Name Act*.[10] Certainly there seem to be good reasons for permitting paralegals to undertake this work.

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[9] See *Turner v. American Bar Association*, 407 F. Supp. 451 (N.D. Tex. 1975).

[10] R.S.O. 1990, c. C.7.

Recommendations 40 to 41:

40. Licensed paralegals duly qualified by passing a special examination should be authorized to appear as duty paralegals in the Ontario Court of Justice and, if future policy makes it permissible, in the Superior Court of Justice.

41. Licensed paralegals duly qualified by passing a special examination should be authorized to prepare and file the necessary papers and to do all that is required in completing an uncontested divorce in circumstances which meet the following conditions:

(a) where the parties have no children and no significant assets or the assets are jointly held, and where there is no need for, or there is no issue outstanding as to, spousal support and there are no outstanding collateral issues (for example, division of pensions);

(b) where the parties have a separation agreement resolving all collateral issues with a certificate of independent legal advice executed within one year of the commencement of the divorce action; and

(c) where there is a court order resolving all of the ancillary issues granted within one year of the commencement of the divorce action.

X

AREAS OF PERMISSIBLE PRACTICE - WILLS, POWERS OF ATTORNEY, LIVING WILLS AND COMMISSIONER FOR OATHS

A. Wills

It is apparent from the submissions that I received that paralegals, both supervised and independent, are active in the area of wills. Submissions were made by Brenda Miller of the Institute of Law Clerks of Ontario. She explained that her work is done under the supervision of a lawyer and that her special field is that of wills and estates. She appears to be an able, responsible and conscientious law clerk. She stated that she often conducts interviews with clients with regard to wills. She drafts a will and gives it to a designated lawyer for review. When it has been approved she arranges for it to be signed and witnessed. She takes a very active, if not a leading, role in the probating of the wills and the distribution of the assets. It is evident that paralegals under the supervision of lawyers play an important role in the field of wills and estates.

Independent paralegals have practised to a limited extent in this field. Sharon Baldwin made submissions on behalf of the Ontario Paralegal Society. She too appears to be a competent and dedicated paralegal. She told me that there are occasions when clients ask her to prepare a will. She undertakes that task only if it is a "simple" will. By that she means a will which deals with relatively few assets, no more than a matrimonial home, a bank account and an RRSP. Also she requires a very clear division of assets before she agrees to prepare the will. That is to say, the sole beneficiary is the spouse and, if the spouse predeceases the testator, then the estate is to be divided in equal shares to the children *per stirpes*. If there is anything more

complex involved, either in the way of assets or of distribution, she refers the client to a lawyer.

It is the position of the various lawyers' organizations that, just as there is no "simple" divorce, there is no "simple" will. It was said that the drafting of wills is traditionally a loss leader in the work of lawyers. Conscientious lawyers give great attention to the drafting of a will including a consideration of estate planning and the eventual distribution of assets. It is their view that a will should only be drawn by a lawyer. Along this line, very moving testimony was given by Margaret Rintoul, representing the Canadian Bar Association - Ontario and Mrs. Laura Legge, former treasurer of the Law Society of Upper Canada. There can be no doubt of the great skill and dedication of lawyers such as these. They described the careful attention given by lawyers to preparing wills for a very low fee. Their desire to serve the public well at the lowest possible cost was very evident.

Perhaps lawyers are not aware of the extent of self-help material pertaining to the drafting of wills and the administration of estates that is available to members of the public. Will forms are available in most business stationers. Further, there is a wealth of material accessible on the Internet. It includes diskettes, access to books on wills and estates, and provides any number of forms for the drawing of wills. This material is available in Canada, and it sets out forms that are acceptable to most of the provinces, including Ontario. Indeed, the Office of the Attorney General of Ontario supplies kits which include directions and forms for both powers of attorney and wills.

When lawyers' organizations were advised of the ready availability of so much material, they replied that it is all right for an individual to make a personal selection, since that individual would be responsible for his or her own mistakes. However, they argued, it should not be the role of a paralegal to undertake such complex work and perhaps make an error that could have an adverse effect on the heirs of the client for whom they draft the will.

The whole manner in which members of the public are obtaining access to legal advice is changing. This is something that must be recognized by everyone, including lawyers. It may be that in time advice by website will be the norm. There will be a standardization of forms and clauses for wills that have been tried, tested and approved by judges and lawyers. In any

event, it is clear that the lawyers' organizations cannot accept any intrusion into the field of wills by paralegals. I cannot agree with their position.

It would be helpful to individuals, and to the community as a whole, if licensed paralegals were permitted to draw what they have described as "simple" wills. That is to say, the estate should contain no more assets than a matrimonial home, bank accounts, RRSPs, insurance policies and savings bonds. If there are other assets, then a licensed paralegal should not draw the will. Further, if the sole beneficiary is to be the spouse, and if the spouse predeceases the testator or there is no spouse, and the assets are to be divided equally among the children *per stirpes,* then it is appropriate for a paralegal to draw the will. If there is no significant divergence from the described combination of the relative simplicity of the assets and their distribution, it is appropriate for a paralegal to draw the will. That must suffice for the present.

In the future, with standardization of questionnaires which assist in determining how a will should be drawn, and with the increasing availability of standard and accepted forms of wills based on the answers given to the questionnaires, it may be appropriate for the governing body of paralegals to seek an extension of the authorized work of licensed paralegals in this field.

The governing body should include in its curriculum a special course in this area. The course on wills should emphasize to paralegals their limited role in drawing wills and the circumstances in which it becomes essential to refer a client to a lawyer. The same course should include references to the importance and significance of the power of attorney and the living will. The successful completion of that course should suffice to demonstrate the competence of a paralegal to undertake the very limited work authorized in this field. "Grandfathered" paralegals will be required to pass a special examination before they will be entitled to practise in this area. The qualifying examination should take into account the limited role of paralegals in drawing wills.

B. Powers of Attorney

It is the position of the legal organizations that paralegals should not be permitted to prepare or execute powers of attorney. They are not prepared to change their position on this issue. This position is overly paternalistic.

Once again, power of attorney forms are available in most stationery stores. Certainly they are available on the Internet, together with clear instructions as to their nature and significance.

Similarly, a kit that includes living wills and powers of attorney is available from the Attorney General's office. These forms are provided with commendably clear, easy-to-follow explanations of the nature and significance of these documents, and directions for their execution.

It is eminently appropriate that licensed paralegals, who have often become a part of particular community, should be able to advise their clients with regard to a power of attorney and have it executed. This would be helpful to individuals and to society. The execution of a power of attorney may save endless heartache and financial suffering. It is not so complex a document that a licensed paralegal cannot adequately advise with regard to it and arrange for its execution.

C. Living Wills

Lately there has been a great deal written in the newspapers and magazines regarding living wills. These documents answer the concerns of a growing number of people who do not wish to be maintained indefinitely on life support systems. Once again, these documents are available on the Internet. The concept of the living will is referred to in a booklet on wills prepared by the Ministry of the Attorney General. This is a very clearly worded and helpful document. Not only is it helpful to the individuals who read it, but it provides a further indication of the importance to society of living wills.

Living wills drawn along with ordinary wills could benefit not only the individual signing it, but society as a whole. A living will is clearly meant to be a document readily understood by the public. I cannot believe that a document meant to be simple and straightforward should require the services of a lawyer for its execution. Licensed paralegals should be able to advise with respect to a living will, to prepare it and to have it executed.

D. Commissioner for Oaths

It is obvious that paralegals require authorization to swear affidavits in connection with proceedings in Small Claims Court and before many of the boards and tribunals. Although this was objected to by some of the legal organizations, I can see no reason why authorized, licensed paralegals should not be commissioned to swear affidavits. The seal itself which they will use could indicate that as licensed paralegals they are duly authorized to swear affidavits in all proceedings. Swearing affidavits is a necessary adjunct to their work.

Recommendations 42 to 46:

42. Licensed paralegals should be authorized to draw a simple will in the following circumstances:

(a) where the assets consist of no more than the matrimonial home, bank accounts, life insurance policies, RRSPs, annuities and personal chattels; and

(b) where the distribution of those assets is straightforward, for example, all to a spouse and if the spouse should predecease the testator, or if there is no spouse, to be divided in equal shares *per stirpes* among the children.

43. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to prepare a "simple" will as set out above.

44. Licensed qualified paralegals should be authorized to advise regarding powers of attorney and living wills, to prepare these documents and have them executed.

45. Licensed paralegals should be authorized to administer oaths and take affidavits.

46. Upon their attaining a licence, paralegals should be issued a seal under the *Commissioners for Taking Affidavits Act*,[1] which indicates that they are licensed paralegals and are commissioners for filing affidavits in and for the courts in Ontario.

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[1] R.S.O. 1990, c. C.17.

XI

AREAS OF PERMISSIBLE PRACTICE - REAL ESTATE

According to all the legal organizations, there is no place for paralegals in the real estate area. Their position is that only a lawyer can handle a real estate transaction. They stressed that there is no such thing as a "simple" real estate transaction. It may be helpful to review what paralegals are doing in real estate at the present time.

Independent paralegals are undertaking many of the elements of real estate transactions on behalf of lawyers. For example, they are routinely retained to make the search of title, to attend on the closing of the transaction, and to make the necessary subsearches to complete the closing.

On the aspect of searching titles, Sandra Thwaites of First Canadian Title Insurance Company made a very interesting and helpful submission. She stated that she has never found an error in a search of title performed by a paralegal. She explained that, on the renewal or replacement of a mortgage, the transaction now is routinely conducted through the bank with paralegals doing the necessary searches or subsearches and attending on the closing. This saves money for the individual and the banks. She commented that this system is generally working extremely well.

Clearly, it should be recognized that paralegals can and probably should be entrusted with the search of a title and the closing of real estate transactions. It is true that they cannot certify title because of the complexity of problems that may arise which necessitate a legal opinion. However, this may become of somewhat less significance when all real property comes within the Land Titles System. Lawyers, like the banks, will obviously find it more efficient and more economical to employ paralegals for their title searches and closings.

Despite this, I agree with the view ably expressed by Sidney Troister representing the Canadian Bar Association - Ontario that it is the lawyer who plays the role of the quarterback in a real estate transaction. I am satisfied that there may be so many complex legal problems that arise prior to and on closing that only a lawyer should handle the completion. That said, I hope that lawyers will make greater use of licensed paralegals on those aspects which they can undertake and have undertaken so successfully and competently, namely, the search of title, closing and, on occasion, the preparation of the statement of adjustments.

Is there anything else in the nature of a real estate transaction that can be undertaken by a paralegal? I believe there is. For example, acting for the vendor of a residence that is either clear of any mortgage encumbrance or subject only to one mortgage could be appropriately undertaken by a licensed paralegal. There is nothing in such a transaction that demands the services of a lawyer. It can readily be undertaken by a qualified licensed paralegal.

The curriculum for the accredited community college should include a course on real estate. This course would be sufficient to train a paralegal to perform the functions outlined here. However, "grandfathered" paralegals will be required to write a special examination to practise in this area.

I would add that in the future the legal advice pertaining to the renewal of a mortgage will become so standard and so clear that paralegals will be able to act on the renewal of a mortgage. If the parties have had advice with regard to the original mortgage, then simply a repetition of, or a reference to, that advice, coupled with an explanation of any changes in the terms, would be all that is required. I would expect that licensed paralegals could undertake this role in the near future.

Paralegals should not have a trust fund and will not require one for their limited real estate practice. The only circumstances requiring a trust fund would be the receipt of fees before the services were rendered.

Recommendations 47 to 48:

47. Licensed paralegals should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

48. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

XII

HOW SHOULD PARALEGALS BE GOVERNED?

A. Need for Regulation

There can be no doubt that regulation of paralegals is required. The submissions are replete with sad and upsetting accounts of some who pass themselves off as "paralegals" in order to appear as agents. These individuals are obviously incompetent, irresponsible and all too often fraudulent. Many members of the public have been deceived and fleeced by these people. Steps must be taken to eliminate those who are incompetent, irresponsible and fraudulent, and to recognize as paralegals only those who are well qualified, competent and responsible. It is only in this way that members of the public will be protected and boards and tribunals will be assured of adequate representation by qualified, competent paralegals. These goals can only be achieved by the establishment of a governing body which will license and regulate paralegals.

B. Nature of Governing Body

It cannot be denied that at the outset the expense involved in establishing an organization with a system of governance will fall upon the Province of Ontario. In a short time licensed paralegals will be self-sustaining, but during the interim period costs cannot be avoided. Yet those costs will be small in comparison with the cost to society of unregulated paralegals.

What form should the governing body take and how should it be organized? There are a number of alternatives that might be considered. For example, should paralegals be self-governing? Should a ministry of the provincial government regulate them? On this issue there is much to

commend the second option put forward and ultimately adopted by the Law Society of Upper Canada. This option is described in the Report in following words:[1]

> It would, to a significant degree, function independently of the Law Society, on the one hand, and the Government of Ontario on the other.
>
> The Board would be composed of some combination of Government nominees, representatives elected or nominated by paralegal organizations, representatives elected or nominated by the Law Society, and potentially, representatives of other constituencies. The Government might wish to preserve its authority to nominate all members of the Board of Directors though, in some cases, upon the recommendation of other bodies, such as the tribunals involved, paralegal associations or the Law Society.
>
> Under the governing legislation, the Government would delegate to the corporation or agency some degree of regulatory authority. Again, the government may choose to retain final approval over regulations dealing with such matters as qualifications, standard setting and discipline proposed by the corporation or agency.
>
> The new governing body for the legal aid system in Ontario, Legal Aid Ontario, has some of these features. Thus, the Board of Legal Aid Ontario is composed of eleven persons appointed by the Lieutenant Governor in Council. Five persons are appointed on the recommendation of the Attorney General. Five further nominees are selected by the Attorney General from a list proposed by the Law Society of Upper Canada. The President of the corporation is nominated by the Treasurer of the Law Society, the Attorney General and a third party agreed upon by them. A majority of the Board *must not* be lawyers.
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> Though Legal Aid Ontario is not a regulatory body, its composition provides an illustration of a scheme where

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[1] Law Society of Upper Canada, *Convocation Report* (March 23, 2000), at pp. 182-183 [footnote omitted].

> a body could be created that is, in effect, a collaborative venture between two important stakeholders, the Law Society and the Government of Ontario. If such a body were to be created for the purpose of regulating independent paralegals, representatives of the paralegal community, in some appropriate number, should be appointed to the board of directors of the corporation.

At the outset, I would emphasize that it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the Province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the Law Society should not be in a position to direct the affairs of the paralegals. Yet paralegals would be remiss in their duty to themselves and to the public if they did not seek out the advice of the Law Society on many topics and take the opportunity of consulting with them. Paralegals can and should benefit from the experience and learning of the Law Society.

Insofar as the Province is concerned, it must be remembered that, in their work before provincial boards and tribunals and in the specified courts, licensed paralegals may often be required to oppose the interests of the Province. They must remain independent of the Province. It follows that the Province should not be in a position to direct the affairs of licensed paralegals.

I am in agreement with the suggestion of the Law Society of Upper Canada that the composition of the governing body of the paralegals should resemble that of Legal Aid Ontario. At the outset, I would envisage a governing body composed of 15 people. The Attorney General should appoint two nominees from the Law Society. In the interim period, four paralegals members should be appointed by the Attorney General of Ontario. In addition, four members should be appointed by the Attorney General as his representatives and four members should be appointed by the Attorney General to represent the general public. The fifteenth member, the chairperson, should be an independent person appointed by the Attorney General, perhaps a retired member of the Ontario Court of Justice or the Ontario Superior Court of Justice, Divisional Court.

The governing body must be able to function independently of the Province of Ontario and the Law Society of Upper Canada. A board composed in the manner I have suggested should provide that independence. The difficult interim period will, I expect, last at least two years. Whenever it is completed, the composition of the board may be varied by regulation to provide for two additional members elected by licensed paralegals. Perhaps those two members could replace two of those appointed to represent the Attorney General. Eventually, perhaps, after ten years, the paralegals will become self-governing. This should not occur until the institution is well established and has the confidence of the public and the provincial government.

C. Unauthorized Practice

The empowering statute for paralegals and its regulations should provide that a licensed paralegal practising outside the areas specifically authorized for paralegals will be guilty of an offence. This will lead to discipline proceedings and could result in the loss of the individual's licence. The provincial offence would be prosecuted by the Attorney General on a referral by the governing body.

D. Duties of Governing Body

The governing body will have the responsibility of drawing up rules and regulations for the functioning of the paralegals' organization and its governing body. These should be as clear, uncomplicated and straightforward as possible. A difficult interim period may extend for over two years from the establishment of the governing body to the completion of the first two-year community college program which will have followed the approved curriculum. During this period, the governing body will have to consider and resolve a number of matters.

i) Once the governing body is in place, one of its first tasks will be to design the competency examinations for all the specialized boards and tribunals and specified courts in which paralegals will be appearing and for the permitted areas of practice for which examinations are required. The preparation of the specialized examinations and the courses for those who want to take these examinations should be given a high priority. The

competency examination will be an essential step in providing competent and responsible paralegals as agents appearing before specialized boards and tribunals and in specified courts. When the examination is prepared a time requirement of perhaps one year will have to be established and published, requiring paralegals to write their examinations within that one year.

ii) At the expiry of the one-year period the governing body will have to specify that only licensed qualified paralegals and those holding a secondary licence will be authorized to appear before the specialized boards and tribunals and specified courts. When the examinations are designed and taken, the governing body will then be able to designate those paralegals who are authorized to practise before the designated specialized boards and tribunals and specialized courts.

iii) The governing body will have to develop, in consultation with the Law Society of Upper Canada, members of faculties of the accredited community colleges and members of the specialized boards before whom paralegals appear, the general curriculum for the education of paralegals over the two-year program.

iv) The governing body will have to adopt a code of conduct for licensed paralegals. I would recommend that the code of conduct follow as closely as practicable that of the Law Society of Upper Canada. It must also implement a discipline procedure and ensure that it operates in a manner that is both fair to members and accommodates the need for dealing quickly and openly with public complaints.

v) The governing body will have to determine the minimum coverage under the errors and omissions policy (perhaps $1,000,000) and arrange for the policy. It will also be required to establish a compensation fund and provide the least onerous method of financing that fund. The governing body must set the fees for obtaining a licence and the annual fees required of licensed paralegals.

vi) So soon as it is feasible, the governing body should consider arrangements for a program of continuing education for paralegals.

E. Implementation of Regulatory System

The regulation for licensing and regulating paralegals will have to be phased - in over a period of time. Before paralegals can be licensed, a statute recognizing their position and that of their governing body will have to be enacted. Once the legislation is enacted and the board of directors of the governing body is appointed, a further period of over two years will be required during which the first graduating class will enroll and complete their community college education.

It will also be necessary to allow grandfathered paralegals a one-year period after the special examinations are set to permit them, either by studying on their own or by taking a course offered through the accredited community colleges, to prepare for and write the examinations. After the one-year period, only those paralegals who have successfully passed the competency examination will be permitted to practise in the areas authorized for licensed paralegals. It will be some time, perhaps ten years, before the governing body can be fully functional as a self-governing institution.

Recommendations 49 to 53:

49. The Province of Ontario should enact legislation for the regulation of licensed paralegals and delegate to a corporation which functions independently of the Law Society of Upper Canada and the Government of Ontario the responsibility of regulating paralegal practice.

50. The board of the corporation should be composed of 15 persons, and in the interim period during which the board becomes fully functional, the following appointment process should be in effect:

(a) four members representing the Attorney General of Ontario should be appointed by the Attorney General of Ontario;

(b) four members representing the public should be appointed by the Attorney General of Ontario;

(c) four members representing independent paralegals should be appointed by the Attorney General of Ontario;

(d) two members of the Law Society of Upper Canada should be appointed by the Attorney General of Ontario; and

(e) one independent chairperson should be appointed by the Attorney General of Ontario.

51. Once the board is fully functional:

(a) the four members representing the independent paralegals should be elected from their membership instead of being appointed by the Attorney General of Ontario;

(b) two additional members representing licensed paralegals should be elected from their membership; and

(c) the four members representing the Attorney General of Ontario should be reduced to two members.

52. The enabling legislation should provide that it is an offence for licensed paralegals to practise outside the areas specifically authorized for them.

53. Where a licensed paralegal practises outside specifically authorized areas, the governing body should refer the matter to the Attorney General of Ontario for prosecution.

RECOMMENDATIONS

Recommendations 1 to 5: Chapter II General Education and Good Character Requirements of Paralegals

1. A system should be established for the regulation and licensing of independent paralegals who wish to work in the permissible areas of practice.

2. All paralegals applying for a licence must be of "good character" as the Law Society of Upper Canada has defined that term.

3. Once the courses and curriculum at the accredited community colleges have been approved by the governing body, the following licensing requirements will be in effect:

(a) paralegals must successfully complete a two-year program provided by an accredited community college;

(b) the curriculum for the two-year accredited community college program will be fixed by the governing body of paralegals in consultation with the members of the faculties of the community colleges, justices of the Ontario Court of Justice, members of boards and tribunals, and the Law Society of Upper Canada; and

(c) upon completion of the two-year accredited community college program, all graduating paralegals will spend three months in a mentoring program, and mentoring may be provided by a lawyer or licensed paralegal with five years of experience; alternatively, it may be attained by monitoring the public proceedings of a specialized board or tribunal with its consent for a period of three months.

4. Those who have practised under the supervision of a lawyer or as

independent paralegals for at least two years prior to January 1, 2000 will qualify as "grandfathers" for a licence; they will not be required to complete the two-year accredited community college program.

5. Once the special examinations for paralegals have been approved by the governing body, those who qualify as "grandfathers" will have to pass the special examinations to demonstrate their competency to work in any of the permissible areas of practice and to appear before specialized and non-specialized boards and tribunals and specified courts.

Recommendations 6 to 16: Chapter III The Provision of Protection for the Public

6. The governing body should develop a code of conduct to which all licensed paralegals must adhere, which to the greatest extent possible resembles the code of conduct prepared by the Law Society of Upper Canada for its members.

7. The code of conduct for licensed paralegals should include a provision that information obtained by a licensed paralegal from a client in the course of providing services to the client must be held in the strictest of confidence and not be divulged unless authorized by the client or required by an order of a court.

8. A procedure for disciplining licensed paralegals should be developed.

9. The procedure for discipline should include, until the paralegal organization becomes self-regulatory, a panel consisting of three members: one lawyer; one licensed paralegal; and one member of the public to review complaints.

10. The discipline panel should be authorized to impose an appropriate punishment, including licence suspension or revocation, fine and reprimand, or any other disposition that it deems appropriate.

11. There should be provision for an appeal of the decision of the discipline panel to the governing body or to the Divisional Court; the

appellate body should be authorized to adopt, rescind or vary the decision of the discipline body as it sees fit and impose such sanctions as it deems appropriate.

12. Errors and omissions insurance should be carried by all licensed paralegals.

13. A compensation fund should be established by the governing body.

14. Whenever requested and wherever possible the services of licensed paralegals should be made available in the French language.

15. A process for assessing the accounts of licensed paralegals should be developed by the governing body.

16. All licensed paralegals should use a standard retainer letter which clearly indicates that the licensed paralegal is not a lawyer; that the paralegal is only authorized to practise in specified areas; that advice given to the client must be limited to those areas in which the paralegal is authorized to practise; and that the client may have the bill assessed.

Recommendations 17 to 32: Chapter IV Areas of Permissible Practice - Provincial Boards and Tribunals

17. Wherever the empowering statute of any board or tribunal provides that parties may appear by agent, only licensed qualified paralegals should be authorized to appear.

18. All licensed paralegals appearing before a specialized board or tribunal should be required to either pass a special examination which demonstrates their competence in the work of the particular specialized board or be recommended by a specialized board or tribunal for a secondary licence.

19. The secondary licence should be valid for one year and be renewable annually, and the licensed paralegal should be restricted to appearances before the specified board or tribunal.

20. A paralegal who obtained his or her licence after having completed a program in an accredited community college should be authorized to appear before any non-specialized board or tribunal.

21. "Grandfathered" licensed paralegals should be required to pass a general examination respecting administrative tribunals in order to appear before non-specialized boards. However, a "grandfathered" licensed paralegal who has passed an examination to appear before one specialized board should not be required to pass a further examination to appear before non-specialized boards and tribunals.

22. Costs may be awarded to parties who are represented by licensed paralegals before provincial boards and tribunals and where the licensed paralegal is authorized to appear on the first level of appeal from a decision of a board or tribunal, before those appeal courts.

23. Boards and tribunals should be authorized to order costs against a licensed paralegal if his or her conduct is extremely disruptive, misleading, mendacious or unscrupulous.

24. Boards and tribunals should be authorized to expel a licensed paralegal on a temporary basis where the behaviour of the licensed paralegal is incompetent, dishonest or disruptive.

25. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Rental Housing Tribunal.

26. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal in the first instance from the Ontario Rental Housing Tribunal.

27. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to both assist injured parties in preparing their accident claim forms and to participate in the mediation and arbitration work of the Dispute Resolution Group of the Financial Services Commission of Ontario.

28. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal before the Director of the Dispute Resolution Group of the Financial Services Commission of Ontario.

29. Section 398 of the *Insurance Act* should be amended to permit authorized licensed paralegals to appear before the Dispute Resolution Group of the Financial Services Commission of Ontario.

30. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Labour Relations Board.

31. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Workplace Safety and Insurance Appeals Tribunal.

32. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Municipal Board.

33. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before any other specialized board or tribunal of the Province of Ontario.

Recommendations 34 to 36: Chapter VI Areas of Permissible Practice - Small Claims Court

34. Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Small Claims Court.

35. Licensed paralegals who are qualified to appear in the Small Claims Court should be authorized to take an appeal at the first level from a decision of that Court.

36. Clients represented by licensed paralegals should be entitled to costs in the Small Claims Court or on the first level of appeal from that Court.

Recommendations 37 to 38: Chapter VII Permissible Areas of Practice - Provincial Offences

37. Licensed paralegals duly qualified by passing a special examination should be authorized to appear and prosecute and defend provincial offences in the Ontario Court of Justice.

38. Licensed paralegals duly qualified by passing a special examination should be authorized to appear at the first level of appeal from a conviction or acquittal on a provincial offence in the Ontario Court of Justice and their clients on such appeals may be awarded costs.

Recommendation 39: Chapter VIII Areas of Permissible Practice - Criminal Offences and Criminal Pardons

39. Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Ontario Court of Justice only in the following specified *Criminal Code* summary conviction offences:

- **vagrancy;**
- **fraudulently obtaining food, beverage or accommodation;**
- **fraudulently obtaining transportation;**
- **using slugs and tokens;**
- **defacing coins;**
- **duty to safeguard on ice;**
- **failure to keep watch on person towed;**
- **falsifying employment record; and**
- **nudity in a public place.**

Recommendations 40 to 41: Chapter IX Areas of Permissible Practice - Family Law and Change of Name Applications

40. Licensed paralegals duly qualified by passing a special examination should be authorized to appear as duty paralegals in the Ontario Court of Justice and, if future regulations make it permissible, in the Superior Court of Justice.

41. Licensed paralegals duly qualified by passing a special examination should be authorized to prepare and file the necessary papers and to do all that is required in completing an uncontested divorce in circumstances which meet the following conditions:

- **(a) where the parties have no children and no significant assets or the assets are jointly held, and where there is no need for, or there is no issue outstanding as to, spousal support and there are no outstanding collateral issues (for example, division of pensions);**
- **(b) where the parties have a separation agreement resolving all collateral issues with a certificate of independent legal advice executed within one year of the commencement of the divorce action; and**
- **(c) where there is a court order resolving all of the ancillary issues granted within one year of the commencement of the divorce action.**

Recommendations 42 to 46: Chapter X Areas of Permissible Practice - Wills, Powers of Attorney, Living Wills and Commissioner for Oaths

42. Licensed paralegals should be authorized to draw a simple will in the following circumstances:

- **(a) where the assets consist of no more than the matrimonial home, bank accounts, life insurance policies, RRSPs, annuities and personal chattels; and**

(b) where the distribution of those assets is straightforward, for example, all to a spouse and if the spouse should predecease the testator, or if there is no spouse, to be divided in equal shares *per stirpes* among the children.

43. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to prepare a "simple" will as set out above.

44. Licensed qualified paralegals should be authorized to advise regarding powers of attorney and living wills, to prepare these documents and have them executed.

45. Licensed paralegals should be authorized to administer oaths and take affidavits.

46. Upon their attaining a licence, paralegals should be issued a seal under the *Commissioners for Taking Affidavits Act,* which indicates that they are licensed paralegals and are commissioners for filing affidavits in and for the courts in Ontario.

Recommendations 47 to 48: Chapter XI Areas of Permissible Practice - Real Estate

47. Licensed paralegals should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

48. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

Recommendations 49 to 53: Chapter XII How Should Paralegals Be Governed?

49. The Province of Ontario should enact legislation for the regulation of licensed paralegals and delegate to a corporation which functions independently of the Law Society of Upper Canada and the

Government of Ontario the responsibility of regulating paralegal practice.

50. The board of the corporation should be composed of 15 persons, and in the interim period during which the board becomes fully functional, the following appointment process should be in effect:

- **(a) four members representing the Attorney General of Ontario should be appointed by the Attorney General of Ontario;**
- **(b) four members representing the public should be appointed by the Attorney General of Ontario;**
- **(c) four members representing independent paralegals should be appointed by the Attorney General of Ontario;**
- **(d) two members of the Law Society of Upper Canada should be appointed by the Attorney General of Ontario; and**
- **(e) one independent chairperson should be appointed by the Attorney General of Ontario.**

51. Once the board is fully functional:

- **(a) the four members representing the independent paralegals should be elected from their membership instead of being appointed by the Attorney General of Ontario;**
- **(b) two additional members representing licensed paralegals should be elected from their membership; and**
- **(c) the four members representing the Attorney General of Ontario should be reduced to two members.**

52. The enabling legislation should provide that it is an offence for licensed paralegals to practise outside the areas specifically authorized for them.

53. Where a licensed paralegal practises outside specifically authorized areas, the governing body should refer the matter to the Attorney General of Ontario for prosecution.

SUGGESTIONS

Suggestions 1 to 2: Chapter V Areas of Permissible Practice - Immigration and Refugee Board of Canada

1. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the three divisions of the Immigration and Refugee Board of Canada in Ontario, namely the Convention Refugee Determination Division, the Immigration Appeal Division and the Adjucation Division.

2. The Immigration and Refugee Board of Canada should require agents appearing before them in Ontario to provide them with the evidence that they are licensed and have passed the special examination for the Immigration and Refugee Board of Canada.

Additions

54. Licensed paralegals should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

55. "Grandfathered" paralegals, duly qualified by passing a special examination, should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

APPENDICES

CORY REVIEW

A FRAMEWORK FOR REGULATING PARALEGAL PRACTICE IN ONTARIO

TERMS OF REFERENCE

The Attorney General is seeking input on the role of paralegals in Ontario's justice system, including a regulatory governance model, areas or scope of practice and education requirements for paralegals. He wishes to have consensus built among interested stakeholders for a framework regulating paralegals in Ontario. Such consensus among the stakeholders should create a regulatory framework that responds to the needs of the community.

The Honourable Mr. Peter Cory's role:

a. In order to assist the Attorney General in developing a framework for regulating paralegals in Ontario, Mr. Cory has been retained to conduct a consensus building process among interested stakeholders to provide input on a regulatory governance model, areas of practice and education requirements for paralegals.

b. Mr. Cory will identify the various persons, groups and organizations that may have an interest in this matter (referred to as "stakeholders"), including but not limited to organizations such as:

- Paralegal Society of Ontario;
- Paralegal Society of Canada;
- Organization of Professional Immigration Consultants;
- Law Society of Upper Canada;
- Canadian Bar Association;
- County and District Law Presidents' Associations;
- unrepresented paralegals;
- Provincial and Family Court Judges;

- Society of Ontario Adjudicators and Regulators;
- community colleges;
- representatives of the public, including small businesses, who use paralegal services; and
- POINTTS

c. Mr. Cory will identify the interests and positions of stakeholders on the issues of a regulatory or governance model, areas of practice, and education of paralegals and will proceed with a consensus building/facilitation process on these issues.

d. Mr. Cory may design and conduct this consensus building/facilitation process in the manner he determines to be appropriate having regard to all the circumstances.

e. In areas where no consensus is reached, Mr. Cory will make recommendations to the Attorney General.

f. On or before May 31, 2000, Mr. Cory will report to the Attorney General on

i) the positions and interests of the stakeholders;
ii) areas of common ground among the stakeholders;
iii) Mr. Cory's opinion of the status of consensus on a governance model, areas or scope of practice, and education requirements for independent paralegals;
iv) the results of the consensus building/facilitation process; and
v) Mr. Cory's recommendations for any areas where consensus was not reached.

CORY REVIEW

A FRAMEWORK FOR REGULATING PARALEGAL PRACTICE IN ONTARIO

SCHEDULE FOR DISCUSSIONS/MEDIATION WEEK (MARCH 13/2000)

MONDAY MARCH 13, 2000

9:30 Qualifications of Independent Paralegals

1:30 Areas of Permissible Practice – Criminal and Quasi-Criminal

THURSDAY MARCH 16, 2000

9:30 Areas of Permissible Practice – Immigration

1:30 Areas of Permissible Practice – Corporate

FRIDAY MARCH 17, 2000

9:30 Areas of Permissible Practice – Insurance

1:30 Areas of Permissible Practice – Agents in Non Criminal Matters (Provincial and Federal Tribunals and Courts)

SATURDAY MARCH 18, 2000

9:30 Areas of Permissible Practice – Miscellaneous (including powers of attorney/commissioner for oaths, pardons)

1:30 Areas of Permissible Practice – Landlord and Tenant

MONDAY MARCH 20, 2000

9:30 Areas of Permissible Practice – Real Estate

TUESDAY MARCH 21, 2000

9:30 Areas of Permissible Practice – Family

1:30 Areas of Permissible Practice – Wills

MONDAY MARCH 27, 2000

1:30 Areas of Permissible Practice – Family & Criminal Matters

TUESDAY MARCH 28, 2000

9:30 Regulatory Model – Administration and Structure of Regime

1:30 Regulatory Model – Mandatory Insurance, Compensation Fund and Unauthorized Practice

ORGANIZATIONS AND INDIVIDUALS

The following organizations and individuals made oral submissions to the Review.

1. Abatis Paralegal Services

    Dahn Batchelor

2. Advocates' Society

    Joseph Falconeri
    Jeffrey Manishen
    Judith Nichol
    Jeremy Solomon

3. Algonquin College

    Helen Gilhooly

4. Canadian Bar Association - Ontario

    David Harris
    Kahlid Baksh
    Carolyn Fineberg
    Gary Gotlieb
    Joel Guberman
    Virginia McLean
    Paul Vesa
    Robin Seligman
    Judith Huddart
    Hilary Linton
    Steven Rosenhek

Paul McCarten
Sidney Troister
Margaret Rintoul
Ross Davis

5. Centre for Spanish Speaking People

M. Wasserman

6. College of Immigration Practioners of Canada

Charles Pley

7. Criminal Lawyers' Association

Joseph Kenkel

8. Dolage, Roy

9. Family Lawyers' Association

Mary Reilly
David Jarvis

10. First Canadian Title Insurance Company

S. Thwaites

11. Fosy, Roger

12. Gould, Amy

13. Hamalengwa, Munyonzwe

14. Humber College

    Philip Sworden

15. Immigration and Refugee Board of Canada

    Paul Aterman
    Gary Yee

16. Institute of Agents at Court

    Stephen Parker
    Andrew McKay

17. Institute of Law Clerks of Ontario

    Brenda Miller

18. Insurance Council of Canada

    Deirdre Martin

19. Koba, Halyna

20. Law Society of Upper Canada

    Robert Armstrong
    George Hunter
    Laura Legge
    Rick Wilson

21. Lawyers' Professional Indemnity Company

    Malcolm Heins

22. Legal Aid Ontario

    Nye Thomas
    Keith Wilkens

23. Metro Toronto Chinese Legal Clinic

    Avvy Yao-Yao Go

24. Monson Group

    Marc Monson

25. Nipissing Law Association

    Selma M. Colvin

26. Ontario Association of Career Colleges

    Allan Doerr

27. Ontario Association of Professional Searchers of Record

    Julius Spria
    James Sturdy

28. Ontario Court of Justice

    The Hon. Lauren Marshall
    The Hon. Harvey Brownstone
    The Hon. Marvin Zuker

29. Ontario Crown Attorneys' Association

    Sarah Welch

30. Ontario Rental Housing Tribunal

    David Braund
    Don McVicer

31. Ontario Trial Lawyers' Association

    Gary Will

32. Par-O-Law Inc.

    Wm. Lutton

33. Paralegal Association of Ontario

    David Nancoff

34. Paralegal Society of Canada

    Eileen Barnes
    Michael Abrams
    Gerald Grupp
    Danny Guspie
    Sandy Hutchens
    Carol Johnson
    Edward Or
    Steven Sager

35. Paralegal Society of Ontario

    Sharon Baldwin
    David Goddard
    Robert Hotrum

36. POINTTS Advisory Limited

    Brian Lawrie

37. Power Paralegal Services

    Marcello Tafuro

38. Prosecutors' Association of Ontario

    Paul Dray

39. Provincial Prosecutors' Association

    Allan Scott

40. Rad, Sam

41. Seneca College

    Linda Pasternak

42. Smithson, Paul

43. Society of Ontario Adjudicators and Regulators

    Murray Chitra

44. Stephens, Dr. Ruth

45. Success Business College

    Charles Wagner

46. Thomas, J. Kerry

ORGANIZATIONS AND INDIVIDUALS

The following organizations and individuals provided written information, or made written submissions, to the Review.

1. Abatis Paralegal Services

   Dahn Batchelor

2. Advocates' Society

   Jeffrey Manishen

3. Algonquin College

   Helen Gilhooly

4. Association des juristes d'expression de l'Ontario

   Nathalie Boutet

5. Boldt Paralegal and Mediation

   Maureen Boldt

6. Boldt, Victor

7. Bovard, Justice J. W.

8. Browne, Angela

9. Campbell, Lisa

10. Canadian Association of Black Lawyers

    Roger Rowe

11. Canadian Bar Association - Ontario

    Bill King
    Paul McCarten
    Glen Rutland
    Robin Seligman
    Douglas Simpson
    Sidney Troister

12. CAW - Canada

    Lewis Gottheil

13. Centre for Spanish Speaking People

    M. Wasserman

14. Cobb & Jones

    R. Keith Simpson

15. College of Immigration Practioners of Canada

    Charles Pley

16. Commercial Paralegal Inc.

    Gerry Leslie

17. Community and Legal Aid Services Programme

    Debra M. Ram

18. Cobb & Cosman

    John V. Cosman

19. County & District Law Presidents' Association

    Michael O'Dea
    David Lovell

20. Criminal Lawyers' Association

    Joseph Kenkel

21. Delbarre, Clancy

22. Dufferin County Law Association

    Bruce Pugsley

23. Durham College

    Judy Spring

24. Family Lawyers' Association

    Mary Reilly
    David Jarvis

25. Financial Services Commission of Ontario

    Dina Palozzi

26. First Canadian Title Insurance Company

    S. Thwaites

27. Gonder, Dan

28. Hamalengwa, Munyonzwe

29. Humber College

    Philip Sworden
    Murray Horowitz

30. Immigration and Refugee Board of Canada

    Philip Palmer

31. Institute of Agents at Court

    Stephen Parker

32. Institute of Chartered Accountants of Ontario

    C.W. Hourigan

33. Institute of Law Clerks of Ontario

    Brenda Miller

34. Joint Committee on Equity and Diversity

    Abby Bushby

35. Koba, Halyna

36. Law Society of British Columbia

    Karl F. Warner

37. Law Society of New Brunswick

    Michael Carrier

38. Law Society of Upper Canada

    Robert Armstrong

39. Lawson, Fisher, Inc.

    Andy Fisher

40. Lawyers' Professional Indemnity Company
    Malcolm Heins

41. Legal Aid Ontario

    Hon. Sidney B. Linden
    Nye Thomas

42. McCann, Pat

43. McMillan, Kathleen

44. Metro Toronto Chinese and South East Asian Legal Clinic

    Avvy Yao-Yao Go

45. Metro Toronto Lawyers' Association

    Luci Favret
    Bonnie Tough

46. Monson Group

    Marc Monson

47. Mody, Prakash

48. National Paralegal Association

    Gregory Parker
    Jacques Jovence

49. Nipissing Community Legal Clinic

    Stuart Bailey

50. Nipissing Law Association

    Selma M. Colvin

51. Office of the Employer Adviser

    Michael Zacks

52. Ontario Association of Career Colleges

    Paul Kitchin

53. Ontario Association of Professional Searchers of Record

    James Sturdy

54. Ontario Conference of Judges

    Justice P. H. Megginson

55. Ontario Crown Attorneys' Association

    Sarah Welch

56. Ontario Labour Relations Board

    R. O. MacDowell

57. Ontario Rental Housing Tribunal

    David Braund

58. Ontario Trial Lawyers' Association

    George Bonn

59. Or, Edward

60. Par-O-Law Inc.

    Wm. Lutton

61. Paralegal Association of Ontario

    David Nancoff

62. Paralegal Services of Ontario

    Bob Hotrum

63. Paralegal Society of Canada

    Eileen Barnes
    Tony Guspie
    Steve Sager
    Dahn Batchelor
    Sandy Hutchens

64. Paralegal Society of Ontario

    Trevor Jacquard

65. POINTTS Advisory Limited

    Brian Lawrie
    Karen Williams

66. Power Paralegal Services

    Marcello Tafuro

67. Prosecutors' Association of Ontario

    Paul Dray

68. Provincial Prosecutors' Association

    Allan Scott

69. Ray, Brian

70. Reder, Pat

71. Regional Municipality of Sudbury

Heather Salter

72. Riecz, Thomas

73. Rumleskie, Jane

74. Saunders, Leslie

75. Schwarz, Gillen

Jayson Schwarz

76. Seneca College

Wanda Forsythe

77. Simms, Phillip E.

78. Smithson, Paul

79. Society of Ontario Adjudicators and Regulators

Murray Chitra

80. South Etobicoke Community Legal Services

Douglas Kwan

81. Stephens, Dr. Ruth

82. Success Business College

Charles Wagner

83. Strike, Salmers & Furlong

    Alan Strike

84. Taylor, George

85. Thomas, J. Kerry

86. Toronto Police Services

    Norman "Rusty" Beauchesne

87. West End Legal Services of Ottawa

    Mary Garrett

88. Willowdale Community Legal Services

    Margaret McReynolds

89. Workplace Safety & Insurance Appeals Tribunal

    Ian J. Strachan

90. Zabala, Vincent

91. Zuker, Justice M.